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*QUESTIONS OF THE DAY. No. XXXIX.*

# FEDERAL TAXES AND STATE EXPENSES

OR

THE PUBLIC GOOD, AS DISTINCT FROM THE GENERAL WELFARE OF THE UNITED STATES

By WILLIAM HITER JONES, A.M., B.L.

And now I will unclasp a secret book,
And to your quick-conceiving discontents
I 'll read you matter deep and dangerous;
As full of peril and advent'rous spirit,
As to o'erwalk a current, roaring loud,
On the unsteadfast footing of a spear.
O! the blood more stirs,
To rouse a lion than to start a hare.
—*First part of* KING HENRY IV.,
*Act I., Sc. III.*

SECOND EDITION, REVISED

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1890

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DEPARTMENT OF JUSTICE,
WASHINGTON, July 29, 1887.

WM. H. JONES, Esq.,
FORT WAYNE, IND.

Dear Sir:

I thank you very much for your little work, *Federal Taxes and State Expenses*, just received on yesterday. I have read it carefully and with great interest. It presents the questions in strong, cogent, and apt style, and if circulated, must serve to awaken thought and stimulate inquiry on subjects not less important to the country, than any that can be discussed; and you have done good work in this presentation of them.

Very truly Yours,
A. H. GARLAND.

FROM *The American*, Phila., Oct. 13, 1887.

Whether Mr. Jones is a Republican or a Democrat, a Free-Trader or a Protectionist, we are glad to say does not appear in his book. It has the important merit of discussing this problem of finance entirely apart from the current questions of our party problems. What brings him to the subject is the patent fact of the financial needs of the States under the present system of taxation.

INSCRIBED

TO THE

HONORABLE AUGUSTUS H. GARLAND

LATE ATTORNEY-GENERAL OF THE UNITED STATES

IN GRATEFUL ACKNOWLEDGMENT OF HIS GENEROUS ENCOURAGEMENT TO THE AUTHOR TO UNDERTAKE THIS WORK

## PREFACE TO THE SECOND EDITION.

If explanation be needed for publishing a second edition of "FEDERAL TAXES AND STATE EXPENSES," it may suffice to say, that the distinction between "*The Public Good*," and the "general welfare of the United States," now for the first time attempted to be supplied, is deemed by the author a sufficient one. From whatever cause the existing lack of distinction between these seemingly like, but essentially different subjects may have arisen, it cannot be denied, that the difference between them has not hitherto been marked with the clearness necessary to its being readily understood. The line of separation between them has been so obscure, and the two essentially different subjects so generally confounded, that the author has thought the attempt to mark and separate them, at least to the approval of the Lawyer, the Statesman, and the Legislator, if not to the popular apprehension, was at least worth the attempt; however faulty the attempt may prove. Even positive failure may produce the

effect to challenge some one else to try for more successful results.

Besides this attempt to distinguish "The Public Good" from the "general welfare of the United States," the author has also essayed the more difficult task of giving exact definition to the latter term, as the same is employed in the Constitution to define both the nature and extent of the federal power of taxation in regard to it.

To such as have found fault with the first edition, from misconception of the subject of it, as stated in the title-page, the author takes this occasion to say, that what are commonly called "*the principles of taxation*," are outside, and apart from the subject of the book. It is only with *the subjects* of taxation, and *the constitutional and politic exercise of the power of taxation over them* as implied in the title, that the author has undertaken to deal. These topics are paramount over all others, and "the principles of taxation" (whatever these may be) are wholly subordinated to them throughout; and whenever referred to, the reference to them is always incidental, and is never essential. In fact, while the author has heard or read much of both declamation and dissertation, about "*the principles of taxation*," he has not been able to learn from it all, any more than the declaimers and dissertators

themselves seem to know about them: and, (be it said without intent to offend,) that is very little. It seems never to have occurred to any of them, that during our hundred years of national existence, nothing in the nature of distinctive "principles of taxation," derived from our own experience, and adapted to the needs of the system of Federal government, as distinguished from the monarchial systems of both mediæval and more modern Europe, has been developed and so systematized as to guide us. All "the new wine" of this large experience has been continually put into "the old bottles," "brought over" by the Cavalier to Jamestown, the Pilgrim to Plymouth Rock, the Roman Catholic to Maryland, the Quaker to Pennsylvania, and the Salzberger to Georgia: thus named with no other significance than the order of their coming; for where all is either defective or unsuitable, it were invidious to assign pre-eminence.

The principles of taxation under federal institutions is a subject in and of itself; and too great to be properly treated in the narrow compass of a little volume such as this; and the subject of "*Federal Taxes and State Expenses*," is but as a patch on the surface of the broad domain of Public Law pertaining to federal institutions. For there is a Public Law pertaining to federal institutions, as there is an

essentially different one pertaining to monarchies; but failing to systematize and apply our own, we have gone on continuously for a hundred years, practising "the principles of taxation" derived from European monarchies, however unfitted to federal forms, or illy adapted to the needs of the national existence. Though highly inventive in other fields of discovery, our genius for invention seems to have wholly failed us in this one—perhaps the most important of them all.

When the researches and investigations of Copernicus had announced, and those of Galileo with his telescope subsequently demonstrated, the movement of the planets round the sun, a great advance was made in the science of astronomy, over what it had been as known and practised by the mere fortune-telling astronomers of their time. But great as was this advance, it was not until the laws governing the exact movements of the planetary bodies had been discovered and announced by Kepler, that the system first announced by Copernicus, and afterwards demonstrated by Galileo, attained its full completeness and excellence. In like manner the establishment of the Federal Constitution, like the first discovery of the Copernican system of astronomy, though in itself a mighty, if not a marvellous advance on pre-existing systems of government, yet

needs some such discovery and application of the laws governing its movements and operations, as was supplied to the science of astronomy by what has since retained the name of "Kepler's laws"; which demonstrate that the movements of the planets round the sun describe an Ellipse, instead of the Circle supposed by both Copernicus and Galileo. And as without knowledge of the laws discovered by Kepler, it were impossible to account for the alternations of heat and cold and the vicissitude of the seasons in the solar system, so it is impossible to properly adjust the alternations of benefit and burden and the ever constant vicissitude of prosperity and adversity in the wide extent of the Federal jurisdiction, without corresponding knowledge of the laws which produce and govern them.

It is to the task of discovery and application of these laws, that the author's aims have been directed; with what measure of success or of failure, is now submitted to the impartial judgment of his readers, by

THE AUTHOR.

September 4, 1889.

# PREFACE.

When the investigations which have resulted in the little volume now submitted to the public were begun by the author in 1882, he had no idea of reaching as their result the conclusions stated in the twelfth chapter. Having been mainly influenced in the beginning of his work by the high rate of State taxes on property valuations for State and local expenses of the civil administration, his efforts were long directed to the vain attempt to secure a remedy for the difficulty by harmonizing State and Federal coöperation over the subjects of State taxation. This course at first seemed the only one that could afford ground for hope of lessening State taxes on property valuations, under existing theories of the Federal Constitution and the long-established practice in all the several States concerning these theories; and traces of these views will be found

in some parts of the volume, where they have been purposely left as marking the course of investigation rather than as expressing conclusions. When, however, the author had more fully realized the difficulties in the way of *concurrent exercise* of State and Federal powers of excise taxation over subjects to which each had equal constitutional right, he was constrained to make the distinction between the *subjects*, and *purposes* for which the power of taxation is to be exercised; and to make for the first time (as he believes) the distinction that *while the power of excise taxation is concurrent in the Federal and State governments over all subjects of it*, the exercise of this power *is as separate and exclusive in the one or the other as to the purposes it is to be exercised for*, as any other power with which either is invested under the Federal Constitution. In brief, the power of excise may be stated as concurrent as to *subjects*, but separate and exclusive as to *purposes*.

WILLIAM H. JONES.

FORT WAYNE, INDIANA,
January 27, 1887.

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# FEDERAL TAXES AND STATE EXPENSES.

## INTRODUCTORY CHAPTER.

"Our remedies oft within ourselves do lie,
Which we ascribe to Heaven: the fated sky
Gives us free scope; only, do backward pull,
Our slow designs when we ourselves are dull."
*Alls well that ends well.*—SHAKESPEARE.

Under Federal institutions, the terms "Police," "Social Order," and "Right of Eminent Domain," taken together, may be correctly defined to include all that has been meant to be expressed by the absurd and misleading terms, "State Sovereignty," "Sovereignty of the States," "Reserved Rights of the States," etc.

This statement may startle some, and awaken a feeling of antagonism in others, who have not scrutinized the purport of the terms and subjects named. As to the police power in government, no pretence of its existence in the federal authority can be deduced from the provisions of the Constitution of the United States. As to social order, the absence of the

necessary police power to enforce and maintain it, is no less conclusive of its non-existence as one of the subjects, or one of the attributes, of federal authority; while the term "Right of Eminent Domain," though commonly employed only in the restricted sense of separate State power to devote private property to public uses on making just compensation for it, may be correctly, as well as more largely, defined to include every right and subject of legislation not otherwise provided for in the Constitution of the United States. For the recognized right and power in each State of the Federal body, to devote private property to public uses, may well be made to include the subordinate one to regulate and control the terms and conditions of its acquisition, possession, and transfer among its citizens. For example: Purchase, Inheritance, Descent and Distribution of Estates; Execution, Delivery, and Effect of Deeds and Conveyances; Making and Probate of Last Wills and Testaments; Regulation and Enforcement of Contracts and Obligations; Creation and Control of Corporations, both Public and Private; Police, and Social Order; Construction and Maintenance of Highways and Bridges, Public Buildings for

Legislative, Executive, and Judicial Purposes; for Public Charities, as well as for Punitive and Reformatory Purposes Essential to the Stability of Social Order—and, in short, all the varied subjects of legislation ordinarily treated in the several State legislatures. The number of them is too great for special naming here; but a correct idea of it may be gained by count of *all the "Acts of Assembly,"* or of State legislatures, of *all the States*, and eliminating repetitions therefrom; or, (which will amount to the same thing), from the total conception of all the possible subjects and rights of legislation whatsoever in a sovereign state, deduct those named in the VIIIth Section of the First Article of the Federal Constitution, and the balance left after this deduction may be accepted as the total sum of the subjects of THE PUBLIC GOOD, for which the several States are to provide *by legislation*,* in the due course of the civil administration, each for itself within its territorial limits, under the suggested

* While the several States are thus to provide for the Public good *by legislation*, the Federal authority is to provide for the "general welfare of the United States" by taxation, and *by taxation only*. When the student of federal institutions shall have mastered these two propositions, so as to fully comprehend them, he may feel himself as already well informed concerning the subject of his studies.

Right of Eminent Domain (or Dominion), as a substitute for the less logical, and more perplexing and confusing terms, which in one form or another have hitherto affected the quality of "sovereignty," in virtually dependent and subject States.

This form of stating an old case, though obnoxious to the charge of novelty, may claim the merit of freeing the discussion of its subjects from the embarrassing use of terms which, besides obscuring discussion, tend to excite prejudices rather than to enlighten the judgment. Under its influence, when once established among terms and definitions in our political nomenclature, it may reasonably be expected that the substantial difference between the PUBLIC GOOD OF THE PEOPLE, and the *General Welfare of the United States* shall become more familiar to popular apprehension, than, (be it said without offence,) it has ever been to statesmen and legislators. Hitherto failing to become popularly known under the shadowy disguise of "State Sovereignty," this distinction between *The Public Good*, and *The General Welfare* has yet a possible chance for both existence and recognition under these new and more favorable conditions.

## CHAPTER I.

**Use of Federal Excise Taxes on Spirits and Tobacco for Expenses of the General Civil Administrations in the Several States—The Case Stated.**

The proposal to distribute the net proceeds of the Federal tax on production of all sorts of spirits and manufactured tobacco among the several States, in proportion to their census population, for defraying the expenses of the general civil administration under the several State governments, accords with the principles of construction and interpretation of the Federal Constitution established by the Tenth Amendment of it.

The particular provisions of the Federal Constitution relied on for support of this statement are here cited for convenient reference from subsequent chapters, though the logical con-

nection of these with other provisions not here cited will be found an important though subordinate factor in the discussion of the above proposal, viz.:

FIRST. The Preamble: "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

SECOND. Par. 1 of Sec. 8 of Art. I.: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

THIRD. Sec. 2 of Art. IV.: "The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States."

FOURTH. The Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the

States, are reserved to the States respectively or to the people."

The logic of these several provisions is that while the Tenth Amendment ascertains and perpetuates the general civil administration (legislative, executive, and judicial) in the several States exclusively of each other and of the Federal authority, Section 2 of Article IV. so far hinders the power of State taxation for support of it as to restrict it in practice to polls and property valuations, while both production and consumption of luxuries, such as spirits and manufactured tobacco, are practically exempt from any share in the burden of State taxes necessary to support it; and that exercise of the concurrent Federal power of taxation over these subjects, under Paragraph 1 of Section 8 of Article I. is the compensation provided for this loss of State power of excise taxation. Such seems the more reasonable construction of these two provisions, than that the several States should be charged with the obligation of the general civil administration by the Tenth Amendment, and be limited at the same time by Section 2 of Article IV. to taxes on polls and property valuations for defraying the

expenses of such administration, while production and consumption of the luxuries named shall be practically exempt from any share in the taxation; for the Tenth Amendment, besides establishing the rule for interpreting other provisions of the Federal Constitution, ascertains and perpetuates the general civil administration in the several States. This general civil administration has not been "delegated to the United States by the Constitution, nor prohibited by it to the States"; and it is upon the maintenance of it by taxes as little burdensome, and yet as effective as possible, that "the general welfare of the United States" depends. That this is so, is shown by the fact that independently of the laws of the several States there are none for protection of life and property, or for punishment of offences against either, or for maintaining social order, nor can be. Without this general civil administration by the several States, there would be anarchy in the United States; and "the general welfare of the United States" would be a practically impossible and unattainable condition in the national existence. "The general welfare of the United States," so far as it has any connection with,

or dependence upon, the rights of person or property, and social order (and it is hard, if not impossible, to have any notion of it apart from these), has been so far committed to the exclusive jurisdiction of the several State governments, as that the Federal authority may not touch one of these primary and essential elements of it. These are all subjects of exclusive and separate State jurisdiction, and the Federal authority can exercise no other rightful power concerning them than "to provide for" the expense of maintaining them, by exercise of its powers of taxation.

As the problem of Federal taxes "to provide for the general welfare of the United States," is the main one to be considered in the proposal to use the Federal taxes on production of all sorts of spirits and manufactured tobacco for expenses of the several State governments, it seems deserving of notice that the term "general welfare" occurs but twice in the Federal Constitution, viz., once in the Preamble, as an object *to be promoted* by establishment of the Federal Constitution; and again in Paragraph 1 of Section 8 of Article I. as an object *to be provided for* by Federal taxation

under it. These two phases of an identical national object are as distinct as the means provided for them in the Preamble and in subsequent provisions of the Federal Constitution; and there can be no constitutional warrant to lay and collect taxes "to promote the general welfare" of the United States under the paragraph and section of Article I., which does not apply with equal force to any other of the five distinct national objects recited in the Preamble; for instance, "to form a more perfect union," etc. This plain distinction between the means "to promote," and the means "to provide for," the general welfare of the United States, has, however, been so far constantly neglected and turned topsy-turvy in Federal legislation, as that the power of taxation vested in Congress by Paragraph 1 of Section 8 of Article I. of the Constitution "to provide for" the general welfare of the United States, has been hitherto exclusively exercised "to promote" it, while establishment of the Constitution, independently of the concurrent exercise of the power of taxation under it, seems to have been deemed sufficient "to provide for" that welfare. That there should have been

this persistent exercise of the Federal power of taxation for an object for which the power "has not been delegated to the United States by the Constitution" (see Tenth Amendment), and the like persistent neglect to exercise the power for an object for which it has been so "delegated," is an anomaly under Federal institutions which is hard to be accounted for upon any recognized principle of constitutional interpretation. The fact, however, is indisputable, whatever the causes which have led to it, that while the several States have been stripped of productive and little burdensome sources of revenue by the provisions of the Federal Constitution, as well as by the changed conditions and circumstances of the country since the Constitution was established in 1789, they have also been yet further restricted in available subjects of taxation by the operation of causes wholly beyond separate State control, until polls and property valuations alone remain to them without some check or hindrance.

With the single exception of duties on imports, the right of taxation is coequal and concurrent in the Federal and State governments; but from the operation of causes which will be

pointed out in the ensuing chapters, the equilibrium between these coequal and concurrent rights of Federal and State taxation has been so far lost or destroyed, as that the Federal power to execute it has become overwhelmingly great as compared with that of the several States. Co-operation in exercise of concurrent powers of taxation in the Federal and State governments, to provide for that general welfare of the United States, in which each has mutual and reciprocal interest, is consistent with, and not repugnant to, the relations of the Federal and State systems under the Federal Constitution.

By co-operation in exercise of concurrent Federal and State powers of taxation, is meant that the one shall collect, and the other apply the proceeds of the tax. Instances of such co-operation, in which the States collected the taxes for use of the Federal government, have been frequent. And as to such collection by the Federal government for purposes of the general welfare, see page 90 *post*.

Though the present purpose concern only the application of the foregoing principles to our own Federal Union, yet is is deemed

pertinent to submit the following suggestions, to be kept constantly in view—(to be "read between the lines")—in perusal of the ensuing chapters, viz., that under all federal constitutions having the equivalents of Section 2 of Article IV., and Paragraph 1 of Section 8 of Article I. of our own, direct taxes on polls and property valuations, with exemption from taxes on production and consumption of luxuries especially, and from excise taxes generally, constitute the rule for State taxes for support of the civil administration, unless the Paragraph 1 of Section 8 of Article I. be understood to authorize intervention of the Federal authority to co-operate with that of the States in lessening the burden of State taxes on polls and property valuations, by resort to excise taxes on production and consumption of luxuries and on incomes, and distributing the net proceeds of such taxes among the several States according to census population. The absurdity of giving such construction to the provisions of the Federal Constitution concerning the power of taxation as will practically restrict that of the States to the narrow limits of polls and property valuations, will be strikingly apparent

when we come to the analysis of a county tax-list in a subsequent chapter.

So far, since establishment of the Federal Constitution, we have combined the principles of autonomous State taxes for expenses of the general civil administration, with interchangeable and unrestricted rights of intercourse and citizenship for purposes of the Federal autonomy; and while we have thus made the last-named the strongest possible for all purposes both of offensive and defensive war, we have also made it the most burdensome in taxes on property for all other essential elements of the general welfare in time of peace; and the result has been to keep the States on the constant footing of war taxes for purposes of the general civil administration in them, while the Federal autonomy, with overwhelming preponderance of revenues, has only to pay the debts and provide for the common defence of the United States in time of peace.

This is so obviously the result of the States undertaking to perform too many functions with limited revenues, and the Federal government performing too few necessary ones with very abundant revenues, that some review of

the long train of circumstances, and successive changes in the material conditions of the national existence (see Chap. II. *post.*), seems necessary to account for it.

The source of the absurdity is to be found in the condition and circumstances of the several States, and their political relations to each other, under the Articles of Confederation in 1789. Their "common defence" was then the paramount object to be secured; and as the possible need of revenue for this object was without limit, so the national resources for providing it were left without limit also. The "common defence" being thus provided for, and due provision for *all else that could pertain to all the States in common in time of peace*, being no less essential to the prosperity of a well ordered *Federal State*, than its "common defence" in time of war or public danger, the term "general welfare of the United States" (a term then for the first time introduced into political nomenclature) was resorted to for expressing something essentially distinct from the *Public Good*, all subjects of which were reserved for separate State jurisdiction; and the same power of taxation (but no other power), was

therefore vested in Congress to provide for it. The invention and use of this term as representing a political force in the government, was essential to CREATE the federal system; as, without it, the new system must draw to itself jurisdiction of all subjects of the public good intended to be reserved for the exclusive and local State jurisdictions, and thereby destroy the federal character of the new government. Failure or neglect by the States to make such provision *by taxation*, for what was left of the subjects of original State jurisdiction, on renouncing their right to both import and export duties, and binding themselves, in addition, to share concurrently with the Federal head all other sources of revenue left to them, could hardly have been less senseless or absurd, than needlessly to forego the advantages of such provision after having made it. And yet during the hundred years since this provision was made, while the sources of separate State revenue for purposes of the public good have steadily grown less, and those of the Federal power have proportionately grown larger, the several States have been compelled to take on themselves the additional burden of

the "general welfare of the United States," in so far as the same is dependent upon, or involved in, the system of the general civil administration *common to all the States.* So complete has been this failure or neglect of the federal authority during this long period, that the records of Federal legislation do not show any act of Congress to lay and collect a tax, duty, impost, or excise, *objectively* to provide for the "general welfare of the United States."

That exercise of the power of taxation has so far been exclusively for other purposes than those of the "general welfare of the United States," has further grown out of the need for revenue for paying the public debt, and for purposes of "the common defence," at the beginning of the Federal system, while need of it for those of the general welfare was both remote and contingent. The several States had been accustomed, both in their colonial existence and under the Articles of Confederation, to provide, each for itself and in its own way, for what had become under the Constitution, and thenceforth has continued to be, *the essential element* of the "general welfare of the United States," (viz., the system of the civil administration).

Their separate legislative, executive, and judicial agencies were then, as now, in being; and as the whole field of concurrent internal taxes of all sorts was open to them, and then both ample and unrestricted, instead of being, as now, practically limited to polls and valuations, no serious inconvenience could be felt in continuing to lay and collect separate State taxes for expenses of the several State systems of the civil administration, instead of resorting at once to the new method of the Constitution. The fresh Federal obligation to serve these ends could, and under the circumstances had perhaps better, lie perdu until these separate State agencies should be found inadequate or defective; and until the new Federal machinery had got to working smoothly in all its complicated parts, and had paid the public debt which was clamoring for all the money the new government could spare beyond what was needed for necessary living expenses. And so both individual citizens and separate States hoped on—(neither of them perhaps yet realizing the nature and extent of the Federal obligation to provide for the "general welfare of the United States"; or, in fact, *what this*

*new term* in their political institutions stood for)—and struggled on under constantly increasing difficulties and debts, occasioned by Indian wars and annuities, the whiskey insurrection, French spoliations, the suppression of Algerine piracy, Louisiana and Florida purchases, the war of 1812, and the numberless other constant demands on the Federal treasury; until finally—(in Jackson's administration) —the last dollar of public indebtedness was paid, and no financial excuse was left for longer delay by Congress, to enter on the discharge of its constitutional obligations to provide for the "general welfare of the United States."

By this time, however, there had arisen, as it were, "a new king over Egypt which knew not Joseph." The long-continued practice of separate State provision for both the public good AND "the general welfare," originating, as we have seen, in the financial needs of the Federal power in the beginning of its existence, (and possibly supplemented by lack of experience as to the nature and extent of the Federal obligation to provide for the "general welfare of the United States"), and continued from

supposed rather than solid reasons of public necessity, had now acquired the force of constitutional habit. Both popular sentiment and political party opinion had concurred to produce the conviction that the then existing condition of things should be permanent. It was generally thought no less than "treason to sovereign State rights" for Congress to make any provision by taxation, (the only lawful means in its power,) to provide for the "general welfare of the United States"—as if any other means existed, or could exist, by which the rights of the several States and the public good of their people could be preserved and perpetuated in equal safety and prosperity in all of them. These rights of the States, and this public good of their people, cannot be either safe or equally prosperous in all the States, under constantly increasing burdens of necessary State taxes, and constantly diminishing sources of separate State revenue, without the intervention of Federal taxes to equalize them. Nothing else could be needed to secure this equilibrium of safety and prosperity in all the States; and accordingly nothing else but the power to produce it *by taxation* is

vested in the Federal authority by the Constitution. The refusal of this constitutional obligation, under these conditions, was equivalent to denial of its existence. Like the twelve half-baptized "brethren," whom St. Paul found at Ephesus, public men, both of that day and continually since, seem not to "have so much as heard whether there be any . . ." (such provision). There were then no debts of the United States, though many and crushing ones in some of the States, all of them incurred mainly for proper purposes of "the general welfare of the United States," in addition to such as were compelled, under the "sovereign" State obligation to provide for the public good within respective State limits, in the course of separate State administration. Little or nothing was needed for purposes of "the common defence"; for we had grown out of the weakness of infancy into the sturdy strength of manhood, and were at peace among ourselves and with the rest of the world. The Federal revenues were overflowing the treasury; but the "new king over Egypt," having forgotten or ignored his obligation to Joseph, could think of nothing better to be done with "the sur-

plus" than to "distribute" it—yes, these are the terms—among the Egyptians, instead of avoiding its accumulation by making due provision for the necessary living expenses of Joseph's children. And so it has continued to this day; with only the deplorable difference that both the surplus and the distributions have steadily grown larger—Joseph's children meanwhile starving and in bondage, while the Egyptians are eating their fill out of the flesh-pots from which the children have been excluded.

The term "general welfare of the United States" was a stranger in political nomenclature at the time of its introduction and use in the Constitution. It had, perhaps, a vague popular meaning, as implying something beneficent in connection with exercise of unlimited power of taxation (for it is only in connection with exercise of this power by Congress that the "general welfare of the United States" is mentioned in the Constitution); but this was all that could then be understood to be expressed by use of the term. It had no legal meaning beyond this vague signification; for under the antecedent separate State care of *all*

subjects of the public good, there had been neither need nor occasion for exact legal or technical definition of the term. In this respect the term presents an exception to the precision and accuracy everywhere else prevalent in the terms and phraseology of the Federal Constitution. For example, such terms as "habeas corpus," "bill of attainder," "letters of marque and reprisal," "suits in law and equity," etc., indicating subjects of either positive or negative jurisdiction, had, each of them, a definite legal import. So, too, terms indicating qualities as distinct from subjects of jurisdiction, such, for example, as "law impairing the obligation of contracts," "ex post facto law," etc.; these, and every other term used in the Constitution, either to denote a subject or a quality of jurisdiction, except this one, had an antecedent and technical legal meaning, and are deemed to have the same incorporated with themselves. This is, as it were, *novus homo*—the new man—supposed to have been born of the people, *but known to have been born of the exigencies of the times as well;* but, however born, there had not hitherto been either name or place for him in either Constitution or laws. On account of

close kin it would not do to call him by the old patrician name of "public good," for only *the sum of all subjects*, both of Federal and separate State jurisdiction, could be properly so called; and "general welfare," though of close kin with public good, is neither identical, equivalent, nor synonymous with it. Further than this, it can only be affirmed with certainty that *this new factor in government* was to be a beneficent one, as in compensation for the unlimited power of taxation severally and equally relinquished by the States, and as therefore affecting them all equally and alike, both in its burdens and in its blessings, and its characteristic and appropriate legend is JUSTICE TO ALL, FAVORS TO NONE. To all which the general civil administration, under separate and exclusive State authority over all subjects of it, more exactly and more closely than any thing else, corresponds.

## CHAPTER II.

Present Physical and Political Conditions of the United States Compared with Those of 1789—Former Easy Enforcement of State Excise Taxes—Obstacles in the Way of it Now—Limited Scale of State Expenses in 1789—Mr. Hamilton's Forecast of Aggregate Annual State Expenses Now Exceeded by Those of Many Single Cities—Co-equal and Concurrent Powers of Federal and State Taxation—Nos. XXXII., XXXV. of the *Federalist* on these Concurrent Powers—Difference between Federal and Single Autonomous States, in Respect to Excise Taxes.

The reader is reminded that when the Constitution was established in 1789, the United States comprised but a trifling extent of territory as compared with that embraced within present limits. Their extent was but as a fringe along the Atlantic coast from New Hampshire to Georgia inclusive, nowhere more than three hundred miles wide between the sea-coast and the Alleghany Mountains. Even between the States nearest each other in this narrow compass, intercourse of all sorts, and especially that for trade and interchange of products, was both tedious and hazardous, and was almost wholly

made by sea-voyages. There was neither steamboat, nor canal, nor railroad, nor telegraph in existence; and, with hardly an exception, river navigation did not extend beyond the limits of a single State. Lands and polls were the principal subjects of taxation for State purposes, and the highly productive and little burdensome subjects of excise taxation, which make the chief sources of revenue for expenses of the civil administration the world over to-day, had not then been developed. Such personal property as then existed was, for the most part, as plainly visible and as easily found and listed for taxation under State tax laws, as lands and polls. There were no public funds in which good investments could be made, and in fact there was little or no money for such investment if opportunity for making it had existed. Investments of money in government securities, even in Europe, was then of but recent existence, and was practically unknown in the United States. There were no such public funds as our national, State, and municipal bonded debts, or securities of private corporations, in which capital accumulated in one State could find investment in another and avoid taxa-

tion at home. There were no railroad, insurance, manufacturing, mining, telegraph, and the like incorporated stock companies, to absorb the capital produced by the common industry of the several States, and shelter it from taxes for State and local purposes. In fact, such taxes as were laid on personal property were, as a rule, specific rather than depending on valuation; as so much per head on horses and cattle on the farms, or on carriages, or on licenses for designated occupations. There were no manufactures in the sense in which this term is used to-day; and the business of the country was carried on by single individuals, or by partnerships composed of these. There were no general laws of incorporation, and special charters were to be obtained from some State legislature before associations of men and capital, with special franchises in designated business pursuits, could be formed; and it was therefore impossible for hundreds of millions of dollars in personal property to be accumulated in single hands through the agency of private corporations, as at present. The legal fiction that "corporations have no souls and never die" had not then so far usurped control

of the public conscience, or that of individuals, as to induce general belief that it was commendable business sagacity to evade payment of State and local taxes by investments in the stock and securities of private corporations outside the State jurisdiction. It has been reserved for more recent times to witness the success of schemes of this sort. Such a thing as share capital in private corporations created by the laws of one State, and owned by citizens of another State, and carrying on business in yet another, or in most, if not in all the other States, was wholly unknown. These forms now represent the larger share of the aggregate personal property in the several States. As a rule, everybody knew about what property his neighbor owned, and could tell pretty nearly how much he ought to pay taxes on; and the different species of property were so few as compared with the almost infinite variety of them at present, that there was little difficulty in finding out what personal property any single individual owned, and in listing it for taxation. Under these conditions, whoever might be tempted to conceal part of his taxable property, in order to avoid being taxed on it, was in dan-

ger of losing caste with his neighbors if he yielded to the temptation, and this was some safeguard against such evasion.

Added to all this, the scale of expenses for State and local purposes was extremely limited as compared with that everywhere prevailing to-day. The average citizen of 1789 knew nothing of either the needs or of the facilities which now exist for State and local indebtedness beyond the means for immediate payment. When the question of establishing the Federal Constitution was being considered by the people of the several States, and objection was made to the great preponderance of the Federal power of taxation under it over that of the States, the objection was answered by Alexander Hamilton to the effect that the necessary aggregate expenses of all the State governments could not, "for many years to come," exceed a million dollars a year for all purposes. This was doubtless a reasonable conjecture for the time it was made for, as well as for the modest scale of State expenses then in vogue; but we know that for the year 1880 the census report shows a total aggregate tax on property valuations alone for all State and local pur-

poses, of $313,000,000 in round numbers, exclusive of poll, specific, and other forms of taxation under State tax laws. The expenses of many single cities now exceed Mr. Hamilton's estimate for the whole country. Those of New York exceed it thirty times over every year.

But it is beyond the present purpose to attempt a complete detail of the causes which have led to the wide difference in results between the well-grounded conjecture of the most sagacious of American statesmen in 1789 and the actual condition of things to-day in the United States, in respect to the working of the system of co-equal and concurrent Federal and State powers of taxation, then for the first time introduced in practice, either in the United States or elsewhere in the world. The immense additions of territory which have since extended the United States of 1789 from ocean to ocean, though the most obvious, have not been the most influential cause which has produced the marvellous change in the condition and circumstances of the several States, as well as of their people, since Mr. Hamilton's conjecture of annual aggregate State expenses was made.

Since 1789 the fabric of civil society has been so far gradually modified as that but little of what was then regarded as the maximum of comfort in the living of the people and of convenience in the public and civil administration remains so to-day. The systems of business and the arts of life have given way to new ones. Forms and elements of property, unknown in 1789, constitute the great mass of wealth in many of the States to-day, while in others but little change in this respect is noticeable in the census statistics. It seems probable that this disproportion in relative progress in wealth of different States, having identical guaranties of personal liberty and of religious freedom under the Federal Constitution, is the result of unequal Federal taxation on account of "the general welfare of the United States." That the States in which exercise of this power has been directly felt have advanced more rapidly than those in which such exercise has been only incidentally felt, would seem to mark it as the cause of the difference between them in material prosperity.

If we take historical facts rather than "traditional intentions" of the framers of the Fed-

eral Constitution for our guide in interpreting its provisions concerning the power of taxation, there seems to be no ground for reasonable doubt that these provisions were framed on the theory that, inasmuch as the power to lay and collect duties on imports was exclusive in the Federal government, and withal peculiarly fitted for exercise of its national functions, this source would be the primary one of that government both from choice and convenience; while the whole field of internal taxation, both direct and excise, which seemed equally adapted for exercise of the reserved powers and functions of the several State governments, would always be open to these for State and local expenses of the general civil administration in them, subject to no other restriction or intervention than that of the concurrent right of the Federal authority to enter it at any time for supplying deficiencies in its duties from imports, from such subjects or sources of revenue as had not been appropriated by the States for State and local uses. For this reason, it was at one time proposed to limit the Federal power of taxation to duties on imports, and to make the power of taxation otherwise exclusive in the

several State governments; but for the reasons stated in Nos. XXXII. and XXXV. of the *Federalist*, the power of taxation was made concurrent in the Federal and State governments, except as to duties on imports, which was made exclusive in the former. But we have learned, from nearly a hundred years of costly experience, that the most productive, as also the least burdensome, sources of public revenue, which were supposed to be perpetual subjects of these concurrent powers of Federal and separate State taxation, have become as practically exclusive in the Federal government as if made so by constitutional provision; and that the production of all sorts of spirits and manufactured tobacco is among the number of them.

These subjects as they exist to-day were practically unknown a hundred years ago. There was but the germ of present production of either then in existence, and difficult and costly means of transportation so effectually limited production to the local demands for consumption, as that State excise taxes on production of them might then be made a source of revenue for expenses of the civil adminis-

tration under separate State authority. The restraint put upon such State excise on production by Section 2 of Article IV. of the Federal Constitution could not then be felt; and the difficulties in the way of transportation of the products named made them readily subject to State excise tax laws. But this condition of things has been so far changed by increased facilities for transportation of commodities, by improved processes of manufacture, as well as by the multiplied means of instantaneous communication between most widely separated points of production and consumption, facilitated as these are by the provisions of Section 2 of Article IV., that consumption of the luxuries named is no longer restricted to the neighborhood of production, but is as widespread as the limits of the United States, and more cheaply supplied from any given point of production to its most widely separated parts, than was possible in contiguous States at the time the Constitution was established. Instead of transportation being now, as it was in 1789, the main item affecting the cost of consumption of these products, that of their constituent elements has come to be the main one; and the place of

production is governed accordingly. Instead of many small establishments in each of the several States, capable of supplying the local demands of its people for consumption, each of them easily subjected to a State excise tax on its production, as was the state of things then in vogue, these small establishments have been replaced by a smaller number of large ones in a few States, in which the agricultural products needed as constituent elements can be procured in greatest abundance and at least cost. The product of these few large establishments, while sufficient for the demand for consumption in all the States, is governed by the price for which it may be sold at home, or in other States, or abroad, when not ruled both as to price and amount of production by combinations among the producers, and is entitled to be sold in any State, under the provisions of Section 2 of Article IV. of the Federal Constitution, upon the same conditions as to State taxes, as if produced in that State. Either argument or discussion seems out of place to show that under such conditions a State tax on production of the luxuries named could produce revenue only in the States in which the busi-

ness of making them is carried on, and in these only so long as some other State either imposed no tax or a less one on production.

If it be urged that the difficulty in the way of separate State revenue from the products of distilleries, breweries, and tobacco factories in the several States, may be obviated by laying the tax on consumption rather than on production, the answer is that while collection of the tax on production is relatively inexpensive and easy of enforcement, the tax on sales has been shown by experience to be so difficult and burdensome as not to justify the expenses of collection. It has been owing perhaps as much to these causes, as to the impediments put in the way by Section 2 of Article IV. of the Federal Constitution, that State excise taxes generally have fallen into desuetude. The enforcement of such a tax on consumption of spirits and manufactured tobacco, in many of the States, would require in each a number of tax collectors as great perhaps as that now employed to collect the Federal internal-revenue taxes on production of these articles. It has therefore been thought more eligible and effective, as well as more conducive to "the general welfare of the

United States," that the Federal authority shall exercise its concurrent power of taxation over production of the articles named, in co-operation with that of the several States, for lessening existing burdens of State taxes on polls and property valuations for support of the general civil administration under separate State authority, subject only to such exigencies in other affairs as shall compel recourse to all its available resources for revenue.

If political problems were susceptible of demonstration like mathematical ones, according to the measure of abstract truth they contain, it might be demonstrated that concurrent powers of taxation in the Federal and State governments have given to the former practically exclusive control of taxes on incomes as well as of taxes on spirits and manufactured-tobacco production, and that these three subjects of excise taxes are of greater value, as sources of revenue, than all others taken together which have been left to the States for expenses of the general civil administration. Certain it is that added to the exclusive right to collect duties on imports, they give to the Federal authority such overwhelming preponderance in practical taxa-

tion as must have been anticipated and provided for by limiting its exercise to the three objects specified in Paragraph 1 of Section 8, of Article I. of the Federal Constitution, viz.: "to pay the debts and provide for the common defence and general welfare of the United States." These terms do not limit exercise of the Federal power to such as it possesses concurrently with the States; and the only question which can properly arise out of them in respect to the proposed exercise of it, is as to whether the maintenance of the civil administration under the several State governments, by taxes least burdensome to the people of the several States, be involved in "the general welfare of the United States?" Nor should it be overlooked, in the answer to this question, that while the Tenth Amendment perpetuates the exclusive jurisdiction of the several States over the subjects of the general civil administration in each, these terms lay the Federal authority under obligation to provide for the expenses of it, by taxes of some sort, to the extent of its connection with "the general welfare of the United States."

It may be pertinent to remark in closing this chapter, that under autonomous or non-federal

governments, where the whole power of taxation is exercised by a single legislative body, as in England or France, the expenses of the civil administration which corresponds with that of the several State governments under our Federal system, are paid out of taxes on production, or else out of government monopoly of the production of spirits and manufactured tobacco, while license fees for retail traffic in these products largely suffice for the expenses of cities and incorporated towns. The revenues from these productions in England, and from the government monopoly of tobacco in France, more than suffice for expenses of the civil administration which corresponds with that of our own several State expenses: and this, notwithstanding the expenses of the civil administration in each of the countries named are modelled after the tastes of royal extravagance, while our greater expenses are professedly based on those of "republican simplicity."

## CHAPTER III.

**The General Civil Administration as Related to "The General Welfare of the United States"—Tendency towards Heavier State Taxes to Support It—Preservation of the State Governments as Necessary "Instrumentalities" of "The General Welfare of the United States"—What is the General Welfare of the United States?—Two Distinct Phases of It in the Preamble and Subsequent Provisions—Parallel between the Riddle of "The General Welfare" and that of The Sphinx in the Greek Mythology—The Difference between "Promoting" and "Providing for" the General Welfare—The Despotism of Classes under It—The "King Bolt" Which Holds the Federal Construction Together.**

The Federal and State governments have mutual and reciprocal interests in "the general welfare of the United States," under the Federal Constitution: the first-named, while having exclusive authority, under Paragraph 1, of Section 8 of Article I., and the Tenth Amendment, taken together, to collect taxes, duties, imposts, and excises "to provide for the general welfare of the United States," is prohibited by the last-named of these provisions from otherwise interfering with any subject of it; and the sev-

eral States, while having exclusive jurisdiction of all such subjects of "the general welfare of the United States" not prohibited to them by the Federal Constitution, are prohibited by the Tenth Amendment from laying and collecting taxes of any kind to provide for it. For, jurisdiction of the subjects of "the general welfare of the United States," not having been delegated to the United States by the Constitution, nor prohibited by it to the States, remains in the latter, by virtue of the Tenth Amendment; and among the subjects of "the general welfare of the United States" which are thus made exclusive ones of State jurisdiction, the rights of person and property, the regulation of the domestic relations, and the maintenance of social order may be named as both conspicuous and essential elements of the general welfare of the United States, as also of exclusive State jurisdiction; and if these subjects be in any way part of, or identified with, "the general welfare of the United States," then is the power to lay and collect taxes to provide for the due administration of them in the general civil administration, an exclusive one in the Federal autonomy; and the States are concur-

rently restricted to the levy and collection of taxes only for such purposes as are local and peculiar to each of the States.

But this concurrent right of taxation in the Federal and State governments is so far checked by the provisions of Section 2, of Article IV., as that no State may discriminate in taxes for local and peculiar purposes, between its own citizens or their property, and the citizens of other States and their property within its jurisdiction; and we need only recur to the uniform current of decisions of the Supreme Court of the United States, in cases affecting the right of State taxation since 1819, to show that the field of State excise taxes has been steadily restricted, until the subjects of it have disappeared from the tax lists of most of the States, and taxes for support of the general civil administration under separate State authority, may be said to be practically limited to polls and property valuations. While this restraint upon the State power of excise is wholly consistent with the obligation of the Federal autonomy to provide for expenses of the general civil administration as essential to the "general welfare of the United States," it means also

heaviest taxes, both as to polls and property valuations, on those least able to pay them, so long as the States shall persist in taxing them for purposes of the general civil administration, instead of demanding of the Federal autonomy the performance of its constitutional obligations in this respect, as essential to "the general welfare of the United States." While the resources of the Several states for revenue to provide for that part of the general welfare of the United States which is inseparable from separate State administration, have thus steadily grown less, the need for larger State expenses becomes more and more imperative, on account of the troubles which from time to time menace the stability of social order and the safety of both persons and property. It is thus for lack of effective exercise of the power of excise taxation by the Federal autonomy alone, that "the general welfare of the United States" is seriously menaced, and the means for maintaining it through instrumentality of the several State governments lessened in proportion to the steadily growing need for them.

Until within a few years there had been no serious need for increased State taxes on polls

and property valuations in any of the States, to meet increased expenses for maintaining social order, as well as to compensate owners for loss or damage to property by mob violence. The riots in Pittsburgh and Alleghany, some ten years ago, may be said to have inaugurated a new era in this respect. Property to the value of many million dollars having been destroyed by the mob, the compensation for it was to be made by increased taxes on what was left; and in this, as in all cases of direct taxes on polls and property valuations, the increased tax fell on those innocent of participation in the outrage, as well as those least able to bear it, in the proportion of about seventy-three to twenty-seven. This statement of the relative ratio in taxes paid for damages done by the mob in the case referred to, is based upon the assumption that the same ratio between small and large property owners exists in Pittsburgh and Alleghany as is shown in the analysis of a tax list to exist in one of the counties in the State of Indiana (see *post.*, Chapter X.) Since the riot in Pittsburgh and Alleghany, like cases have been multiplied in other cities in Ohio, Indiana, Illinois, Missouri, Wisconsin, and Texas, which

are yet fresh in recollection, and which must call for repetition of the same unequal ratio of taxes between small and large property owners, to make compensation for loss of property, or the expenses of State militia. These cases are referred to in this place, to show the increased necessity for additional sources for State revenues, if the State governments are to maintain their original sphere of usefulness under Federal institutions, as the sole conservators of the rights of person and property and of social order.

The tendency towards heavier State taxes on polls and property valuations for support of the civil administration in the several States, may be said to be the most serious menace against the usefulness of the State governments under the Federal system. The constantly recurring agitations and disturbances which from time to time require the armed intervention of State authority, must inevitably lead to the armed intervention of the Federal authority as a substitute for it, on account of the high rate of State taxes necessary to pay military expenses, as well as damages from mob violence. If we would preserve the use-

fulness of the State governments as instrumentalities of the general civil administration, some way must be found by which they shall have access to sources and subjects of revenue not now available to them under concurrent powers of Federal and State taxation. Federal taxation of the production of spirits and manufactured tobacco, and per capita distribution of the nett proceeds of the tax among State populations, according to census population, seems to promise the requisite safeguard to the usefulness and perpetuity of the State governments. If such tax be inadequate to the necessary end, the like tax on incomes, and like distribution of its proceeds, could not fail to accomplish such results, and at the same time do away with existing needs for State taxes on polls and property valuations.

What then is "the general welfare of the United States"? The author has sought but has not been able to find a satisfactory definition of this term in any of the books of writers on constitutional or public law, in the opinions of judges of courts either Federal or State, or in the speeches or public addresses of statesmen and learned professors, or in the compilations of

lexicographers. And yet if such a thing exist, there must be in it some quality by which it may be distinguished from every thing else. If the framers of the Federal Constitution knew what "the general welfare of the United States" was or is made up of, or consisted in, they did not tell us, but seem to have left it undetermined, as a sort of variable quantity which was to be ascertained from time to time by successive generations, according to the changed conditions and circumstances in which they should find themselves. By this they left the way open to all the benefits and advantages to be gained from the lessons of political experience, instead baring it, as under the Chinese constitution, and thus arresting progress in civilization by their posterity, who dare not go beyond the experience of their ancestors. Instead of this, they seem to have purposely left the constituent elements of "the general welfare of the United States," for which Congress was to provide by taxation, to be determined from time to time by those most deeply interested in them; taking care only to establish the formula by which these were to be provided for by taxation. They as little foresaw the impending physical and

political changes in the conditions of the national existence, which in the course of a hundred years was to destroy the State power of excise taxation, as the barons of England foresaw that the principles of the great charter extorted by them from an unwilling king, would in progress of time subject their own posterity to the dominion of the popular will. There is in the provisions of the Federal Constitution respecting taxation "to provide for the general welfare of the United States," the same quality of adaptation to changed conditions and circumstances of the people which has made "the great charter" of our forefathers the ever variable quality in government that makes it conform to the general welfare of the people under the changing conditions of a progressive civilization.

The riddle of "the general welfare" as propounded in the Preamble and provisions of the Federal Constitution, seems to afford a parallel to that of the Sphinx in the Greek mythology. This classic fable is generally accepted as representing some evil in government, for which the only hope of remedy is to be found in profiting from experience of its bad results. The sphinx in the fable is represented as a monster both

wise and cruel, enabled by her wisdom to propound deep mysteries, and prompted by her cruelty to devour such as suffered from them but were unable to explain the cause of their sufferings, until eventually one of these found out and exposed the trick of the fable, and thenceforth the trouble was over.

Now, if some one of our statesmen will take on him the task to distinguish the two general welfares respectively named in the Preamble to the Federal Constitution, and subsequent provisions of it, by setting such mark on each as that neither shall thenceforth be liable to be confounded with or mistaken for the other, he may probably, by so doing, render as great service to the mass of his countrymen, as was rendered to the Greeks by the man who solved the riddle of the sphinx, and thereby freed his country from her hurtful presence. The author does not take this task on himself; for being neither statesman nor politician, his work on the task, though never so well done, would hardly be accepted as satisfactory until some one else, with juster claims to public confidence as an expert in constitutional interpretation, should approve it. And as this constitutional expert,

according to the usage in such case, is to have the credit of the performance, it seems but fair that he shall do at least part of the work it requires. However, while thus modestly declining the whole task, the following suggestions are volunteered, viz.:

FIRST. The term "general welfare" in the Preamble to the Federal Constitution is distinguishable from that in Paragraph 1 of Section 8 of Article I., as an object *to be promoted* by establishment of the Constitution, whereas that used in the paragraph and section named is an object *to be provided for* by taxes under it.

SECOND. There is no power granted to the United States in the Constitution to lay and collect taxes of any sort *to promote any thing*, either "the general welfare," or "the general welfare of the United States"; but only *to provide for* the three national objects set out in Paragraph 1 of Section 8 of Article I., viz.: "to pay the debts and provide for the common defence and general welfare of the United States."

THIRD. "To promote the general welfare" is one of the purposes *accomplished by perpetual establishment* of the Federal Constitution, while

"to provide for the general welfare of the United States" is one of the three specified national objects for which "taxes, duties, imposts, and excises" may be laid and collected under its provisions.

FOURTH. Only that which is common alike to all the States is to be "provided for" by Federal taxation; while that which is not thus common to all the States, but is local and peculiar to some of them, may be "promoted," or "provided for," by separate State authority, at discretion; and to this end the several States have coequal and concurrent rights and powers of taxation with the Federal authority under the Constitution, except as to duties on imports.

These suggestions of essential elements seem to justify the following definition of the term, viz.:

The "general welfare of the United States," is the state or condition of safety and prosperity, in which citizens of the United States have and enjoy their rights of person and property, and the stability of social order, in the civil administration common to all the States, under separate and exclusive State jurisdiction over all the subjects of it.

This definition is intended to include in the civil administration of the several States, every subject and power, which is original and inherent in "free, sovereign, and independent States"—(see the Declaration of Independence, and the subsequent treaty of acknowledgment of this Declaration by Great Britain in 1783, as to what these subjects and powers are—); except as is otherwise provided in the Constitution of the United States. It will enable the reader to mark the material difference between the "general welfare of the United States" which Congress is "to provide for" by laying and collecting "taxes, duties, imposts, and excises," and THE PUBLIC GOOD; (identical with the *pro bono publico* of the Romans; from whom the term has been derived, to modern governments having but a single legislative body;) which is to be cared for by the several States, each for itself within its own territorial limits. The States separately care for and guard all subjects of the Public good, by exercise of inherent "sovereign" powers; while the Federal authority is to provide for the general welfare, by exercise of the single, delegated, and derived power of

taxation only. Beyond this the latter has no right to go in respect of the general welfare; for though its rights and powers in this, as in all other respects, be, like its laws, *supreme*, they are not "sovereign" in the technical sense in which the rights and powers of the several States are so. In this technical sense what are called "sovereign" rights of the several States, are original and inherent; not secondary and derived; while the rights and powers of the Federal authority in respect of the general welfare, are wholly secondary and derived; and though its acts therein be "supreme," they are not "sovereign" in the sense in which the rights and powers of the States are so.

The supremacy of Federal laws is limited to the subjects enumerated in the Federal Constitution: such, for example, as the right to coin money; fix the standard of weights and measures; declare war and make treaties, etc.; while the right of eminent domain remains in the several States.

And yet the several States are not "sovereign States," either in their relations to the Federal government, or to each other, or to other

governments. For what a travesty both upon the idea of sovereignty and of common sense, would be the suggestion of a "sovereign State," without either capacity or power to declare war, to make treaties, to form alliances, to raise armies and provide fleets, or to coin money, or lay and collect duties upon the foreign commerce entering its own ports, to pay for all these things? The chief of a barbarous tribe, in his paint and feathers, *may claim all* these things, and have his claim allowed; but not so one of the States united under the Federal Constitution, *may claim any one* of these things, and have its claim allowed. The inherency of *some* of the rights of sovereignty, viz. the inherent right to guard and provide by legislation for all subjects of the Public good within its territorial limits is the true and more creditable characterization of what is intended to be expressed in the term "State sovereignty," or "sovereignty of the States"; and because these last-named terms have proved misleading, and are subversive of the idea intended to be expressed by them, it were better that they be henceforth allowed to fall into disuse.

The subjects of the Public good differ so much in widely separated States, that to have invested the Federal authority with power to provide for them in any direct way, must in the end have led to exercise of "sovereign" power over all the subjects of it. It was to avoid this hazard that *only that which is common to all the States*, is intrusted by the Constitution to be provided for by Federal taxation. For example: the civil administration common to all the States, and embracing all the varied subjects of the Public good, may be thus provided for, as being both essential and indispensable to the "general welfare of the United States"; while all the subjects of this civil administration are exclusive ones of separate State power. It is THE SYSTEM of this civil administration as distinct from the subjects of it, that is to be provided for by the special, but unlimited power of Federal taxation. The very nature of this special power of Federal taxation fixes both the purpose and the character of it.

Exercise of federal power over the subjects of the Public good, is incompatible with the nature of federal institutions. The two cannot perpetually co-exist; but the special power

of federal taxation to provide for the general welfare under them, through agency of the several State systems of the civil administration, exercising "sovereign" powers over all the subjects of the Public good, IS THE ESSENTIAL CONDITION OF THEIR PERPETUITY.

From the establishment of the Federal Constitution to the present time, the provisions of it for legislation concerning "the general welfare of the United States" seem to have been more in the nature of hindrances in the way of action on the subject, than helps and guides to it. Apparently confounding "the general welfare" named in the Preamble as an object *to be promoted* by establishment of the Constitution, with that "general welfare of the United States" named in Paragraph 1 of Section 8 of Article I., as an object *to be provided for* by taxes, duties, imposts, and excises, political parties have been formed on the basis of particular classes whose immediate interests have been substituted for "the general welfare of the United States," under the pretence (perhaps we should say under the delusion) that this general welfare could be best "promoted" by such

exercise of the Federal power of taxation as would so place these classes in the sphere of its operation, as that direct benefits and profits should enure to them, whatever else might enure to all others. Aside from the fact that this class system of Federal taxes is plainly selfish, as contrasted with that which would provide for the common good of all the national interests without distinction among them, it is not true that Congress is authorized to lay and collect taxes "to promote" any class interest whatever. Such encouragement of class or local interests falls within the exclusive tax jurisdiction of the several States; thus making "the tariff a local question"; though in a sense especially different from that expressed both by Mr. Greeley and General Hancock when candidates for the Presidency.

All that Congress may rightfully do by exercise of its powers of taxation is "to provide for" the three specified objects named in Paragraph 1 of Section 8 of Article I. of the Constitution. It may pass votes of commendation and like encouragements of particular or even of personal interest, and in this way "pro-

mote" or "encourage" them to the extent of congressional influence when exerted in such form; but there is no warrant to be found in the Constitution for it to vote either taxes or money for such purpose. Anybody may "promote" or "encourage" the welfare of another by the like acts of kindness and good-will; but nothing short of money or its equivalent can "provide for" that welfare. A citizen may promote the general welfare of his family by good example and by civility in his intercourse with others, but he cannot "provide for" that welfare by these means only. The folly which seeks "to provide for" the general welfare of everybody by favors to particular individuals is practised only in Federal legislation, and is, in practical politics, as if the reflected light of the moon were substituted for the direct light and warmth of the sun in the natural world.

It is this Federal legislation, which reverses the constitutional rule of taxation and aims "to provide for" the welfare of the whole by laying taxes to promote the interests of particular classes, that has practically secured exemption from State and local taxes of a larger share of the national wealth than is left subject to such

taxes, while the small properties of toiling millions have become the mainstay and resource for support both of the general civil administration under the several State governments, and of the most essential elements in "the general welfare of the United States." The placing of property in the public debt of the United States beyond the reach of State taxation for any purpose whatever, and the exemption of incomes from State taxes on account of the inability of the State power of taxation to reach them, plainly show this; while State tax-lists in all the States, so far as opportunity exists for examination of their details, concur in showing that it is the aggregate direct taxes on property valuations of less than $5,000 each, that yield three fourths of the aggregate revenue paid for support of the several State governments. Such is the result, attested by uniform experience, of the despotism of classes under Federal forms, so shaping Federal legislation through combinations of particular interests, that these rather than "the general welfare of the United States" shall receive the immediate care and favor of legislation, while the great mass of the national interests, not represented or having any share

in the combination, is left to such incidental or reflected hurt or benefit as may chance to fall to it. It is in this way that while political parties have been mainly occupied in groundless wrangles as to whether this or that form of duties on imports would promote or hinder "the general welfare of the United States," the question of how best "to provide for" this welfare has scarcely received attention, except to be left as the foot-ball of party games, in which the spoils of office are the prize, and perpetual vassalage of the great body of tax-payers the object, of class combinations, which enjoy the substantial fruits of party successes, no matter which party triumphs.

The term, "despotism of classes" under Federal forms, has not been lightly or inconsiderately used, but with reference to its true meaning as applied to the civil affairs of government. Despotism means government without regard to constitutional obligations, and may be practised by one or by many less than the whole number in a State towards the others, but it can never be practised by the majority upon themselves; and herein is the strong bulwark both of popular liberty and of the general wel-

fare of the people under Federal forms, when—(but only when)—each and every class interest shall be subordinated to the general welfare of the whole people, by all interests being placed alike on the footing of equality before the law. Without this there can be neither stability for free institutions nor assurance of equal and just taxation under Federal forms.

As in the English language it is the little words, serving the use of conjunctions and prepositions, which tie the several parts of a sentence together and impart strength and harmony to its several parts, so in the Federal Constitution, it is the short and seemingly insignificant Section 2, of Article IV. which serves to tie all parts of the Federal system together. *This* is the bond of union between the several States without which there could be no union worth having. Speaking as a mechanic, it is "the king bolt," which holds the Federal construction together as a whole; and it was to preserve this indispensable bond of the Federal union of the several States, rather than to put down slavery, that the war against secession was prosecuted to a successful issue by the Federal authority. This short section of but

three lines surrenders to the Federal autonomy the sovereign State right of discriminating between its own citizens and those of other States, and secures to those of any State in all the others, not only the hospitality due to friends and favorites, but that equality of rights in trade and privileges of citizenship which is esteemed the most cherished mark of power in a State to grant or to deny: and in doing this, it broke down the State power of excise taxation in all its essentials, except that of bare right. And as if to insure the complete dependence of the States on the Federal power to provide for "the common defence and general welfare" of all the States, the latter are prohibited by another provision of the Constitution from laying export duties without consent of Congress. It has been at this great price that the existing freedom of intercourse among citizens of the several States of the Union has been bought. But for this short section in the Federal Constitution, there would be to-day State custom-house and passport systems similar to those which annoy and obstruct freedom of intercourse among the several states of Continental Europe; and as compensation for which the

Federal authority has incurred the obligation "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States," subject to no other condition or restriction, than that taxes on lands and polls shall be laid according to representation in the House of Representatives, and that duties, imposts, and excises shall be laid by the rule of uniformity, without regard to locality of production or place of consumption.

## CHAPTER IV.

**History of the Exercise of Concurrent Federal and State Powers of Excise Taxation—Lost Equilibrium between Them—Chief-Justice Marshall's Ruling in 1819 and Subsequent Act of Congress Limit the State Power of Excise—Summary of Federal Resources for Revenue Contrasted with the Meagre Ones of the States—The Hands of the Federal Authority Tied from Interfering with Subjects of Exclusive State Jurisdiction.**

If we trace the history of the exercise of concurrent powers of taxation in the Federal and State governments from its beginning to present results, we shall find:

FIRST. That besides destroying the State power to lay and collect excise taxes on production and consumption of such luxuries as spirits and manufactured tobacco, it has so crippled that of taxing incomes, as to greatly impair its value as a source of revenue for State and local purposes, while an act of Congress has exempted property in the public debt of the United States from taxes for any State or local purposes whatever; and

SECOND. That other State excise taxation has been impaired, except on the impracticable condition of uniform State excise tax-laws.

This decay of separate State excise taxation, though gradual, has become so nearly complete that while this source of revenue has entirely disappeared from the tax lists of most of the States, the few in which it yet lingers find its enforcement attended with so much difficulty as hardly to be worth longer retention. Though in theory co-equal as well as concurrent in the beginning of the Federal system, the character of co-equality in constitutional right has been lost for lack of co-equal power to assert itself. From an assumed antagonism between the Federal and State governments, (an assumption not only not warranted by historical facts, but in palpable contradiction both of these, and of the theory of co-equal and concurrent constitutional rights of taxation,) which would avail itself both of pretext and of opportunity on the part of the several States, to destroy the Federal autonomy, the Supreme Court of the United States in the time of Chief-Justice Marshall (1819) gave judgment (in the case of McCulloch *vs.* Maryland, 4th Wheaton) to

the effect that the States might not tax the "instrumentalities" which the Federal government deemed proper to establish for carrying out its purposes; lest if allowed to tax them at all, they might tax them out of existence. The particular "instrumentality" involved in the case before the court in which this judgment was given, was the Bank of the United States, in which the United States was a stockholder, and which claimed and obtained by this "act of judicial legislation," entire exemption and immunity from all State taxes; and from the date of this judgment, all property in the public debt of the United States has been held exempt from State taxes, either by virtue of the principles on which the judgment rests, or else by subsequent act of Congress to the same effect. This intrusion by both the judicial and the legislative departments of the Federal autonomy upon the co-equal right of the several States to lay and collect taxes on property in the national debt owned by their own citizens, is an anomaly which exists nowhere else; and the Federal government of the United States is the only one in the world under which property in the public debt, owned by its citizens, is

wholly exempt from taxes for support of the general civil administration.

This important limitation upon the State power of excise taxation, both by the judgment of the Supreme Court and by act of Congress, is referred to in this connection for the purpose of showing the necessity created by it for intervention of the Federal authority to supply the deficiency in State revenues occasioned by it. It is not the present purpose to question the validity of the judgment, or the correctness of the principles on which the judgment rests. Since that judgment was pronounced, it is to be accepted as part of "the supreme law of the land," and the principles on which it rests as practically part of the Federal Constitution, as if made so by formal amendment of it for limiting the State power of excise taxation.

Such exemption of a particular class of property owners from State taxes to which all others are subject, while the exempted class possesses, relatively with all others, a greater share of wealth, and are therefore better able than many others to pay taxes for support of the civil administration, is peculiar to the American

system of taxation for support of the general civil administration under Federal forms. Exemption from State taxes by judicial construction on the one hand, and by Federal legislative misapprehension of constitutional provisions on the other, have together placed more personal property beyond the reach of separate State power of taxation, than remains subject to it. Under no other form of government is property in the national bank and in the public debt, owned by its own citizens, exempted from taxes for support of the general civil administration; and that such exemption exists in the United States, is the result of changes in constitutional provisions by judicial interpretation, and the want of regard for constitutional compensations, in Federal legislation.

With exclusive right to lay and collect duties on imports, joined to practical monopoly of internal excise taxes on production and consumption of luxuries and on incomes, and having all its "instrumentalities," and property in the public debt, representing at one time several billions of dollars, exempted from State taxes, and sharing co-equal right with the several States to tax every thing else, the Fed-

eral autonomy possesses resources for revenue almost inconceivably great, while the slender resources of the States, shared as these are with the Federal autonomy, seem relatively of but trifling value—mere dregs and riffraff of the national wealth,—made up for the most part of taxes on little property valuations of less than $5,000 each. And yet, out of these meagre resources, the several States are obliged to defray the whole expenses of the general civil administration which upholds the political fabric of civil society, compared with which the corresponding necessary expenses of the Federal government for like purposes in time of peace, are but as "a drop in the bucket." And when we consider that in addition to the cost of the civil administration, the aggregate and collective State, county, township, city, and other form of municipal debts ("instrumentalities?") in the several States, exceeds in total amount that of the national debt, the contrast between the two becomes more striking still. Such contrast between the practical resources for accomplishing the equally necessary and indispensable functions of the Federal and State governments respectively, is

only paralleled by that between the colossal accumulations of personal property by single individuals and private corporations on the one hand, and the relative poverty of 97 out of every 100 tax-payers disclosed by the tax list of a single county in Indiana, and inferentially corroborated by tax lists of other counties throughout the United States, on the other hand. Both these classes—the very rich and the relatively poor—have been produced under the same unequal and oppressive system of taxation, and fairly represent its work in the opposite directions of making the rich richer, and the poor poorer. Tabular statements from this tax list will be found in a subsequent chapter, verifying the statement already made, that 97 numerical per cent. of tax-payers, assessed less than $5,000 each, pay in the aggregate 73 per cent. of the taxes, while the other 3 numerical per cent. assessed $5,000 each and over, pay the other 27 per cent. Is it too much to say that for gross inequality and injustice, this system of taxation is without parallel elsewhere in the world? That of the Turk may equal, but does not surpass it in these characteristics. In fact, injustice is done the Turk by the com-

parison, without the explanation that, paying no attention to such formalities as Tax lists or assessments, he goes into a district to collect a specific sum, and makes short work of it by falling at will on those from whom he can get the required sum with least trouble to himself. And the just reproach of it is that the system is neither the logical result of constitutional provisions, nor the natural outgrowth of Democratic and Republican institutions under Federal forms, but has grown up in spite of both these, under the despotism of classes created by unwarranted exercise of the Federal power of taxation "*to promote*" particular interests, instead of "*to provide for the general welfare of the United States.*" For the Constitution, foreseeing the inevitable tendency which would load the Federal autonomy with overwhelming preponderance over both the methods and the subjects of taxation, while securely tying its hands from interference with the subjects of the several State administrations, has beneficently provided that its powers of taxation shall be exercised "to provide for the common defence and general welfare of the United States." These primary elements of the na-

tional existence, "common defence" and "general welfare," have been inseparably blended in the constitutional provisions concerning them, and like "liberty and union" in the Preamble, have been made "one and inseparable" in the body of the Constitution; and what has been thus joined together may not be separated with impunity. The 97 numerical per cent. of tax-payers who pay 73 per cent. of State taxes "to provide for" that part of "the general welfare of the United States" which is inseparable from the several State administrations, will not always patiently bear the burdens put upon them by the other 3 numerical per cent. who own the larger share of the property and pay only a paltry fragment of the taxes.

## CHAPTER V.

**Excise Taxes as Related to Periodical Depressions in Business—Aggregate Annual State Expenses—The Spirits and Tobacco Taxes Sufficient to Defray Them—Monarchy Cheaper than "Republican Simplicity" in Taxes on Property Valuations.**

As will be shown in the course of the present chapter, the aggregate annual expenses of the several State governments amount to $77,000,000 in round numbers, and those for counties and townships or other form of county subdivision, exclusive of cities and incorporated towns, to about as much more, the total aggregating $154,000,000, which is annually taken out of the value of property and wages paid for labor, for the State and the local expenses named. Is there just ground for wonder that there are periodical depressions in all branches of business in the face of these facts? —that money is scarce—that wages are low and employment uncertain, and "hard times" complained of at almost every turn? $154,-

000,000 a year needlessly taken out of what is necessary for carrying on the business of the country, for the purely incidental purpose of paying State, county, and township or other form of county subdivision expenses (to say nothing of the perhaps equal amount for municipal expenses of cities and incorporated towns, which probably amount to as much more), is too large a sum to be thus annually withdrawn without being missed. The money withdrawn from business, for payment of these taxes, never gets back into the same hands which paid it out. True, its gradual return into the channels of trade from the State and local disbursements of it, tends to lessen the force of the shock which would be felt if the withdrawal were permanent; but these successive annual withdrawals culminate, in the course of every seven or eight years, in a shock to business quite as violent as if each annual withdrawal of money for taxes were permanent. We are just now (in the first half of 1886) recovering from one of these periodical depressions in business, and men differ in opinion as to the causes which occasioned this depression. Some think it was caused by

"over-production" for supply of the limited markets, both at home and abroad, brought about by a restrictive tariff system; others think it is because there are too many greenbacks, while some think it is because there are too few; and others yet, mainly among those who labor in mechanical employments, think all the trouble comes from labor being badly organized, poorly paid, and not duly appreciated; while Democrats generally charge it to the Republican party having been so long in power. But these should remember that the condition of things was as bad, if not worse, at the close of the eight years' administration of that greatest of all the apostles of American democracy—Andrew Jackson, in 1837; and that there was no improvement in the succeeding four years of like Democratic administration under Mr. Van Buren, whose chief claim to the confidence of his party was his promise "to follow in the footsteps of my illustrious predecessor"—a promise which he faithfully kept. We had no tariff worth speaking of then, and as to greenbacks, these had not been thought of, though the germ out of which these have since grown was then suc-

cessfully grafted into the national system of finance as a distinctively Democratic party measure, in the form of "The Independent Sub-Treasury Act," which remains to this day without substantial change, as perhaps the most valuable boon that has been conferred upon the country in the form of a purely partisan measure, by any administration that has shaped the policy or controlled the destiny of the republic. But if the Sub-Treasury act of that day gave us no greenbacks, we had from other sources an unlimited supply of bank notes, which served all the purpose of swelling the volume of the currency; and as to labor being now badly organized, poorly paid, and not duly appreciated, it is better off now in all these respects than it was then; and yet all these seem to have made no impression, or to have imposed any check on the periodical recurrence of these business depressions. And yet while all this is so, the Federal government is annually deriving revenue from its tax on production of spirits and manufactured tobacco, to the amount of $133,000,000 for the year 1882, for which it has no other need than for relief of the people from payment of State

and county taxes, which seem to lie at the bottom of all the trouble; and at the time of the reduction of the tax on manufactured tobacco from 16 to 8 cents per pound in March, 1883, the rate of receipts from the spirits and tobacco taxes was aggregating $144,000,000 a year, and may be expected to reach that rate again if the tobacco tax be restored; or if both the spirits and tobacco taxes be properly adjusted, to produce the whole $154,000,000 needed for payment of the yearly taxes on property valuations for State and township or other form of county subdivision taxes throughout the United States.

It may be stated as indisputable fact that the Federal government has no longer need for these spirits and tobacco taxes, except to apply them, under its constitutional obligations "to provide for the general welfare of the United States," to the payment of the expenses of the general civil administration under separate State authority, for State, county, and township or other form of county subdivision purposes, to which the States are unable to subject them; and that the Federal government would be better off without them for any

other purpose. So general is the impression that the Federal government has no other use for these taxes, that it may be said to amount to popular conviction, and it has even been suggested in influential quarters to repeal the internal revenue act under which these taxes are collected, simply because the government has no further use for them. Instead of thus throwing them away, why not use them in the way of doing the most good that can be done with them, viz., to relieve existing burdensome State taxes on property valuations and business enterprise? Every person who pays a tax under State tax laws, whether farmer, merchant, laboring man, railroad or railroad man, capitalist or non-capitalist, bank or banker, or any and everybody else, has a direct pecuniary interest in this question which may be measured by the amount of State and county taxes he has to pay. Some few, very few, indeed, of all these, have a deep interest in maintaining the present hard system of State taxes; but these are too small in number and too trifling as elements in the social or national existence, to be allowed to hinder so great a good to the whole.

Under the Federal system the burden of the general civil administration in the creation, regulation, and modification of the rights of property, the protection of life and person, and the punishment of offences against all these; the maintenance of social order; the providing for the general public needs and conveniences in the construction of highways and bridges, public buildings for the State legislative, judicial, and executive departments, salaries of public officers, asylums, and other public charities; support of common schools, and all else of exclusive State jurisdiction, which is interwoven with and inseparable from "the general welfare of the United States," as distinguished from that of particular classes of the population,—all these rest primarily upon the several State governments, and is mainly borne by direct State taxes on property valuations, except in the small number of cases otherwise provided for in the Federal Constitution. The enormous cost of this general civil administration is defrayed to the extent of $313,000,000 annually, by direct State tax on property valuations, according to the census report of 1880; but how much is to be added to this from

polls and other specific taxes, not governed by valuation, the census report does not show. This enormous taxation, almost exclusively on account of what is inseparable from "the general welfare of the United States," is paid out of taxes on property valuations, under conflicting State tax laws, which are powerless to tax effectually either production or consumption of such luxuries as spirits and manufactured tobacco, or incomes from colossal accumulations of personal property. Such is the condition of things under Federal forms, without co-operation in the exercise of concurrent Federal and State powers of taxation "to provide for" the general welfare, in which both these powers have mutual and reciprocal interest.

Man-afraid-of-his-horses! Those who are afraid of exercise of concurrent powers of Federal and State taxation over production of spirits and manufactured tobacco, for lessening the burdens of State taxes on property valuations, seem as the counterpart of the noted Sioux chief of this name. There is no doubt of the horse—and a good one—equal to the task required of him—and not fit for any other—and yet afraid of him for the only thing he is

fit for—they might as well have no horse. What is the use of concurrent Federal and State power of taxation, if the one has no need of it, and the other is not able to use it alone, and yet afraid to use it in conjunction with the other? Concurrent rights to tax a subject over which one of them has otherwise exclusive jurisdiction, gives to the other no right to do any thing else with it!

In single autonomies or non-Federal governments, whether a monarchy as in England or a republic as in France, where the whole power of taxation is vested in a single legislative body, tax on production and consumption of spirits and manufactured tobacco, and on incomes from whatever source, whether from property in the public debt or other source, has been found more advantageous to the government and less burdensome to the people than taxes on property valuations for support of the general civil administration in them, which corresponds with that of the several States in our Federal system. The practice of the British, and of most Continental governments, in taxing the production of spirits and manufactured tobacco, may be worth the study of our own; the tax on the products of

breweries and distilleries in England, and the government monopoly of tobacco factories in France, not only sufficing to defray the expenses of the civil administration corresponding to that of the several State governments with us, but to supply a revenue to the national treasury besides.

Before establishment of the Federal Constitution, the several States were as complete national autonomies as either of the countries named, and each of them could tax the productions of all the others when brought into it, without regard to whether such products were taxed if made by its own citizens. Sec. 2 of Art. IV. of the Federal Constitution has stripped the several States of this autonomous right of discrimination, and substituted for it interchangeable and reciprocal rights of trade and privileges of citizenship among citizens of the several States (and it may be added here that the provisions of Sec. 2 of Art. IV. constitute the dividing line and mark the distinction between autonomous and Federal governments in respect to taxation), and the result of this stripping the several States of autonomous rights and substituting others in place of them, is such that the effect of a State tax on

production of the luxuries named, is to suppress production instead of obtaining revenue from it, by driving the industry out of the State into some other in which no tax, or a less one on production exists. In this way the several States have lost these sources of revenue, and while left without other substitute for them than taxes on polls and property valuations, or other check on their acknowledged evils than is to be found in specific taxes on licenses for retail traffic in them, the Federal government has acquired a monopoly of taxing them without other limit than its own discretion. There are few, if any, of the States which derive any revenue from either spirits or manufactured tobacco applicable to the general expenses of the State government. None of them get a revenue from tobacco for any purpose, while that derived from spirits seems, as a rule, to be considered too trifling to be reckoned among the reliable sources of State revenue for general purposes, and is put on the same footing as that derived from fines and penalties for misdemeanors, and is applied solely to special uses. In Indiana it goes to the school fund, and is not found on the tax list in any of the counties.

## CHAPTER VI.

**Constitutional Compensations for Loss of State Power of Excise—The State Governments as "Instrumentalities" in Respect of the General Welfare of the United States—Groundless Assumption of Antagonism between the States and the Federal Autonomy—Effect of State Taxes on Property Valuations on "the Labor Class" in Cities—Groundless Complacency of Americans in Respect to Taxes on Property Being Less in the United States than Elsewhere—Why These Are Greater Here than Anywhere Else.**

That the several States should have relinquished to the Federal autonomy the sources of revenue detailed in the preceding chapter, and at the same time retained full responsibilities for maintaining the essential elements of "the general welfare of the United States," as the same are involved in the general civil administration under the several State governments, could have been done only on one or the other of the two following grounds, viz.:

FIRST. Because the effect of Sec. 2 of Art. IV. was not foreseen; or

SECOND. Because, as seems the more logical

reason, it was done on the faith of the concurrent and collateral undertaking on the part of the Federal authority, "to provide for the common defence and general welfare of the United States."

These words, "common defence" and "general welfare," seem obviously to stand by way of substitution and antithesis for that separate defence and separate welfare of each which, before establishment of the Federal Constitution, each State had been obliged to provide for itself. On any other interpretation of them (see Par. 1, Sec. 8, Art. I.), the several States must be deemed to have alienated their best resources for both separate defence and separate welfare, and to share equally with the Federal authority all others which were left to them, without receiving any equivalent for them in respect to these primary elements of State existence. This would be absurd, if not shocking to the moral sense. If the general welfare of the people of all the several States in equal degree be not meant by the provisions of this paragraph, then their common defence cannot be meant by them; for both these primary and essential elements of the national existence

stand on the same footing in them. There would be, too, this further anomaly, viz.: that the people of the several States would be under Federal government without constitutional obligation to provide for that general welfare which pertains to all of them in common, and at the same time without other resources for that which is distinct and peculiar to each, than resort to taxes on polls and property valuations, under separate State tax laws, to secure it. And such is their condition to-day, and this condition must be perpetual, unless it be changed by such interpretation of the provisions of Par. 1 of Sec. 8 of Art. I., as shall authorize Congress to make the proposed distribution (or some equivalent one) of the proceeds of the Federal tax on production of spirits and manufactured tobacco.

If either of the causes above referred to, or both in conjunction with others, have concurred to produce the result of giving to the Federal authority exclusive control of concurrent powers of taxation over subjects peculiarly fitted for State and local control, and least adapted to those of a Federal character, the obvious way to restore this lost equilibrium in

concurrent powers of taxation, would seem to be modification or amendment of the act of Congress under which such monopoly of concurrent powers is exercised. A change in the internal revenue act of Congress, directing the Secretary of the Treasury to distribute the nett proceeds of these taxes, at stated periods, to the several State treasurers, in proportion to the State populations, would effect this result, and practically restore to the States the fruits of their lost power of excise taxation.

Nor can there be any reasonable ground of objection to the Federal government using the several State governments, or their fiscal systems or officers, as instruments for carrying its constitutional purposes into effect, though there can be none but economical reasons for limiting the exercise of its powers to use of State systems or officers in this case. The practice has been too long established, and is too strongly fortified, both by precedent and by experience of its advantages, to be now objected to. The direct taxes levied by Congress for carrying on the last war with Great Britain, were collected under State systems of tax collection in some of the States. The dis-

tribution of surplus revenue among the several States under the act of Congress approved June 26, 1836, was made through State instrumentalities, and daily examples of the use of State systems and State instrumentalities by the Federal authority in carrying out its purposes may be found in the use by the Federal courts of the rules of practice and proceeding established by State laws. So nearly the whole machinery for taking the Federal census statisics is solely of State provision, that if dispensed with, the Federal share of it would hardly be worth retaining, except as to enumeration of population. In short, the use of State systems, and even of State officers, has been so often resorted to by the Federal government for effecting its purposes in dealing with the several States, that it is matter of surprise that an assumed antagonism between the Federal and State authorities should have been made the ground and occasion for stripping the latter of an important share in concurrent power of taxation, which has been already referred to. The numberless instances of mutual and concurrent good-will between the Federal and State authorities in the close

political inter-dependence between them, broken by but a single resort to arms, and that probably caused more by groundless judicial assumption of its absence than by any thing else, sufficiently attest its survival over all attempts to destroy it, and that the whole country would welcome resort to it for effecting the proposed exercise of concurrent Federal and State powers of taxation by Congress in using the several State governments as instruments for distributing the Federal taxes from production of spirits and manufactured tobacco. If some of the States should refuse to accept their distributive shares of these taxes, as was done in the case of the surplus revenue distribution during Jackson's administration (Act of June 26, 1836), a provision to the effect that such renounced distributive shares should be treated as lapsed, and for that be added to the total of some future distribution, might strongly dissuade from such renunciation, as well as avoid all occasion for claiming the amount at a later period, as was the case with some of the States under the Act of June 26, 1836.

But we are not left to logical inferences, or

to precedents alone on the right of the Federal authority to make use of State instrumentalities to effect its purpose under the Federal Constitution; for the right of the Federal government to use them in respect both to direct taxes on polls and lands and to excise taxes on consumption, was urged as an argument in favor of ratifying the Federal Constitution by the requisite number of States. See *Federalist*, No. XXXVI., pp. 5, 6, and 7.

The following paragraphs are copied from the number referred to, viz.:

"But there is a simple point of view in which this matter may be placed, that must be altogether satisfactory. The national legislature can make use of the *system of each state within that state.* The method of laying and collecting this species of taxes in each state, can, in all its parts, be adopted and employed by the Federal government.

"It has been very properly observed by different speakers and writers on the side of the Constitution, that if the exercise of the power of internal taxation by the Union, should be judged beforehand upon mature consideration,

or should be discovered on experiment, to be really inconvenient, the federal government may forbear to use it, and have recourse to requisitions in its stead. By way of answer to this, it has been triumphantly asked, why not in the first instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be given: the first is, that the actual exercise of the power may be found both *convenient* and *necessary;* for it is impossible to prove in theory, or otherwise than by the experiment, that it cannot be advantageously exercised. The contrary, indeed, appears most probable. The second answer is, that the existence of such a power in the Constitution will have a strong influence in giving efficacy to requisitions. When the States know that the Union can supply itself without their agency, it will be a powerful motive for exertion on their part."

This authority ought to settle the question of co-operation between the Federal and State systems, both in collecting and in applying internal taxes of all sorts. If State systems may be used in collecting Federal taxes for general pur-

poses, there can be no ground for objection to their being used for applying them to a common purpose in which both systems have mutual and reciprocal interests.

In the estimates for aggregate annual State, county, and township or other form of county subdivision expenses throughout the United States, those for cities and incorporated towns will be excluded, because these ought not, for obvious reasons, to be included in the proposed distribution as distinct from the counties or townships of which they form part. The direct relief to State, county, and township tax-payers in these communities will, however, be as sensibly felt as in the others; for besides relief from direct taxes on property valuations for State, county, and township or other form of county subdivision purposes, these cities and incorporated towns may succeed to the right of taxing licenses for retail traffic of all sorts now monopolized to greater or less extent for State and other local uses; and as the retail traffic in spirits and manufactured tobacco is mainly, and in most States exclusively, carried on in cities and incorporated towns,

the revenue from licenses for carrying it on may be expected to supply no inconsiderable sums to such as shall elect to resort to it instead of abolishing it altogether.

But though the city and incorporated town expenses will not be included in the estimates, the fact that the amount of these has been limited to two per cent. per annum of assessed valuation of taxable property, by constitutional amendment in many, if not in most, of the States, seems to indicate that the two per cent. per annum rate of tax on property has been as generally reached for city and incorporated town purposes, as for State, county, and township purposes; thus making the annual rate of tax on valuation for all purposes, four per cent. per annum for that larger number of tax-payers, who live in cities and incorporated towns, as compared with the number who live outside of them, and all of it direct. And when we come to consider that the whole "labor class," technically so called in all discussions of the relations of capital to labor, employed in manufacturing and other business enterprises, live in cities and incorporated towns, and have to pay these four per cent.

taxes on their homes and little property valuations out of their wages, we may obtain from it the clew to much that has not been hitherto accounted for in the attempts made to explain the causes of what is commonly styled "labor troubles." Of course, the force of what is now stated will depend on the completeness with which it shall be shown, in subsequent chapters, that the rate of tax on valuations for State, county, and township or other form of county subdivision purposes, does reach the two per cent. per annum stated, which for the present is assumed without proof. To this end, tabulated statements of a county tax-list will be submitted to show the rate of tax on valuation; and the reader will be left to the guidance of his own judgment as to how far this may reflect the condition of things appearing on the face of the tax lists of other counties, throughout the United States.

It is anticipated that close scrutiny of the statistics of direct taxes on valuations, throughout the United States, will show, if ever made, that the annual rate of State taxes exceeds, rather than falls short of, two per cent. per annum. And when we take into account the

unwarranted exemption of property in the public debt by act of Congress, and the practical exemption of the production and consumption of luxuries, together with incomes of individuals and private corporations, from any share in the burden of State and local taxes, the result seems more monstrous still. I say "unwarranted exemption of property in the public debt by act of Congress," because while Congress has the right, in its discretion, to exempt this subject from taxes for all purposes of exclusive Federal jurisdiction, it has no right to exempt it in terms, from the concurrent tax jurisdiction of the several States, or to refuse its co-operation to subject the others named to taxation for such local purposes of the general civil administration as are not identified with "the general welfare of the United States." And in this connection it seems pertinent to repeat, that under constitutional governments elsewhere, whether autonomous or Federal, exemption of property in the public debt from taxes for support of the general civil administration, does not exist; but this sort of property is put on a footing of equality with others in respect to such taxes.

Americans are acccustomed to talk complacently among themselves about the vast sums of money paid every year for support of royalty, and the large salaries to chief officers of state under the British and other Continental monarchies, and the relatively small ones paid to chief magistrates and other public officers under our republican forms, without apparent consciousness that the wide difference between our own and foreign countries in these respects, grows out of American exemption from taxes of the subjects and sources from which the larger expenses of other governments are derived. It would be simply impossible for these to maintain their more costly forms of the civil administration, if the means for defraying the expense of them were derived, as with us, from direct taxes on polls and property valuations, and from which both production and consumption of spirits and manufactured tobacco, together with all incomes and property in the public debt, are exempt.

At the annual meeting of the American Bar Association, held at Chicago in August, 1879, the President is reported to have said in the course of his address:

"We are a boastful people; we make no end of saying what great things we have done and are doing; and yet behind these brilliant shows there stands a spectre of halting justice, such as is to be seen in no other part of Christendom. So far as I am aware, there is no other country calling itself civilized where it takes so long to punish a criminal and so many years to get a final decision between man and man. Truly, we may say that justice passes through the land on leaden slippers. One of our most trustworthy journalists asserts that more murderers are hanged every year by mobs than are executed in the course of law." And in the same connection the eminent and distinguished lawyer is further reported to say, that the ratio of number of lawyers to total population in the United States is as 1 to 909; while in France the ratio is but as 1 to 4,762, and in Germany 1 to 6,423. Putting these two things together—viz.: the very slow progress of American courts in the dispatch of business, and the great number of lawyers to aid and assist them—the intended inference seems to be that the great preponderance in ratio of lawyers to population has something to do with bringing about the deplorable state of things depicted.

With the very greatest deference and respect for the high authority of the President of the Bar Association (and this declaration is sincere rather than formal) we cannot concur with him in his inferences; and this because his ratio is based on number of lawyers and population, instead of on number of lawyers and number of distinct jurisdictions. Under our Federal system these distinct jurisdictions correspond in number with that of States, Territories, and the District of Columbia—forty-eight in all,—each of them having both original and final jurisdiction in matters of life, liberty, and property, while there is but a single like jurisdiction in either France or Germany. If ratio in numbers rather than fact and form of government and institutions is to determine this grave and puzzling question, we shall have to take some one of these forty-eight distinct jurisdictions, instead of the whole number, for comparison with France and Germany,—a process the distinguished President of the National Bar Association will hardly feel disposed to go through with in view of any practical value likely to be found in its results. No: neither the shame nor the injustice so graphically portrayed grows

out of our having too many lawyers; but both of them come of our having too few courts. And the reason of our having too few courts to keep up with the demands upon them is in our not being able to pay the cost of additional ones out of the meagre resources for revenue from polls and property valuations. Possibly the number of Federal courts might even be lessened without serious inconvenience. If we could avail ourselves of the immense and little burdensome internal excises on production of spirits and manufactures of tobacco, and on incomes, for expenses of the civil administration, as is done in both France and Germany, we might double both the number and the efficiency of our courts, and at the same time dispense with taxes on polls and valuation for any thing but local and peculiar purposes, without at all increasing the number of lawyers. And the courts might then be able, "in the course of law," to do all the hanging now done by the mob without any regard to it. It seems hardly too much to say, that not one of the European monarchies could survive the principle of American taxation for its support for a single year. In not one of them is the

rate of tax on valuation, for support of the civil administration, so high as in the United States; and it is thus that we throw away the advantage of simplicity in republican forms under Federal institutions, by engrafting upon them the most burdensome and unequal system of taxation as yet extant among civilized nations.

The qualifying term "*per capita*," used in connection with the rate of tax on valuations in the above paragraph of the first edition, has been eliminated from it in this one, as being immaterial for the practical use intended by the author, as well as because, except to the close student, it is misleading. It was "borrowed" from tax statistics generally accepted and in vogue, purporting to give *the relative rate of taxes* in the United States and in foreign countries, and is now returned with small thanks for the loan of it. The author has no further use for it in the connection in which he used it. Not that he regards that use as having been proved to be wrong by those who have devoted themselves to that task; (for he does not;) but that he regards its retention as tending to weaken the proper statement of the case.

The rate of tax on valuations has no necessary connection with extent of territory, or numbers, or sparseness, or denseness of the population which has to pay the tax. The usual 2 per cent. rate of tax on valuations in a State or county having 5,000,000 population and $100,000,000 valuation, will yield the same gross amount of annual revenue, as in a State or county having *the same valuation*, but double the number of population. Both the rate of the tax, and the gross amount of it, will be the same in each case; but if the term "per capita" be introduced to juggle with, the relative rate of the tax in the two cases, may be made to appear, to the uninitiated, to be double in the five million population what it is in the ten million one. Or if legitimate use, and not juggling, be the purpose of its introduction, the only use it can be made to serve, is the purely speculative one, of showing the relative denseness or sparseness, or increase or decrease of population within definite periods, or the ratio of wealth to population, rather than the relative rate of tax on valuation. Its use for any other purpose connected with the rate of tax on valuation, is as putting the cart before

the horse; and even for the purely speculative purposes named, at least as good, if not better and more serviceable means may be readily found (*guessing*, for instance). And as use of this term for expressing either the national, or the international rate of the Hotchpotch of taxes of all sorts among those who have to pay them, as distinguished from that of the single tax on valuations, can serve no other practical end or purpose than to ensnare or beguile the unwary, or to mislead and entrap even the professional expert and grave political doctor,* it would seem that it should not be longer suffered to "lag superfluous on the stage," but be consigned to the congenial limbo of exploded humbugs and stale speculative theories, and the like other useless and worn-out things.

* An example of this may be found in the following extract from a somewhat extended criticism of the first edition, in the New York *Commercial Advertiser* of Dec. 2, 1887—a journal supposed to be candid, and known to be influential in the discussion of public questions. The preliminary part of this criticism, in which about every offence known as against "good form," as well as the graver ones of ignorance of the subject, and personal dishonesty in the treatment of it, are freely imputed to the author, is omitted, as not being material to the force of the example; viz.:

"In the discussion of such subjects a man has no right to

make a misstatement. For example he" (the author,) "remarks that our taxation is wholly anomalous under governments elsewhere in the world."

If the author made this statement, (which he doubts,) he deserved to be criticised for making it without adding next after "anomalous," the words *as compared with that.* The merest dunce ought to know that "our taxation" could find no footing "under governments elsewhere in the world." That our critic failed to see this while searching as with a microscope for defects of both form and substance, shows him incapable of properly doing the duties of his office: but he proceeds to say:

"And on page 75, [first edition], goes so far as to say, 'in not one of the European monarchies is the per capita tax on valuations for the support of the civil-service administration so high as in the United States.'"

All which is to be taken subject to two material exceptions to the accuracy of quotation, viz.: that the definite article "the" has been *interpolated by the critic* next before "support," and that the term "civil-service administration" cannot be found on page seventy-five, nor as the author believes, on any other page of the book. So the critic's severe rule about making "a misstatement," seems to go for nothing, unless for others. He evidently does not respect it himself; but proceeds to say further: "The fact is that, while owing to the vastness of our territory and comparative sparseness of our population, this ought to be true, the reverse is true."

This short sentence, of twenty-seven words, in nearly a column of irrelevant matter, contains all this critic has to say about the *relative rate of tax on valuation* for support of the civil administration in the United States and in European monarchies; and if the author were disposed, (as he is not,) to accept the challenge which the critic's imputation of dishonesty offers, he might retort the charge of falsehood, as well as that of "misstatement." But as such recrimination is not helpful for eliciting truth, the author is content to say, that the critic has mistaken the meaning of the statistics which he quotes as authority. *There are no statistics of taxation extant,*

to support the *Advertiser's* statement in the premises; for it is incredible upon any showing of human testimony, short of the completeness of mathematical demonstration, that if from *the total tax on valuation* in any one, or in all the European monarchies, *the national expenses* for war, army, navy, foreign intercourse, church establishment, pensions, etc., be deducted, the balance left for expenses of the civil administration corresponding to our own separate State administration, shall show *a higher rate of tax on valuation*, than is shown in any, or in all the several States with us, *for like purposes*. If this be true, what use is made of the immense total of import duties, excise, and other taxes *not governed by valuation*, collected in these monarchies? And yet the *Advertiser* says all this is true; and when mildly remonstrated with by the author as to the extravagance of his statement, has seriously, but evasively attempted to reaffirm it, by crafty and evasive use of the following words in the issue of Dec. 10, 1887, viz.: "We understood Mr. Jones perfectly well not to include army and navy expenses; he distinctly says 'civil administration.' We deducted the naval and military expenses from taxation in all instances," etc.

But from what sort of "taxation"? The contention is as to *tax on valuation for expenses of the civil administration;* (the parallel of our State taxation;) and the author's words of remonstrance were "gross taxes on valuation," for this purpose. This weak attempt to evade the vital issue virtually surrenders the *Advertiser's* case: and thereupon it is iterated and confidently reaffirmed, that "*In not one of the European monarchies is the rate of tax on valuation for support of the civil administration so high as in the United States.*"

And from the showing of the analysis of a county tax-list, given on pages 140 and 141 of this edition, this seems to indicate that 73 per cent. of the total taxes on valuation paid in the United States, for expenses of the civil administration, is paid by property owners assessed less than $5,000 each; while the great and overwhelming bulk of national wealth in the hands of individual possessors of it in assessments of $5,000 each and upwards, pay but the fragmentary balance of 27 per

cent. This is not guess-work. Its verification rests upon facts disclosed by the only examination that has ever been made of the subject: and the only ground left for discussion about it, is as to whether the examination made in one place, affords a fair indication of the probable result of like examinations when made in other places.

This departure from established usage, in noticing for refutation the adverse criticism of one of the most able and influential of the daily press, is deemed to be warranted by the circumstances of the case. For if the book is wrong on the point of the *Advertiser's* criticism, it may be set down as practically worthless on others also. But if right on this one, the fact of its being so gives additional force to others no less novel in themselves. The author knows too well, and holds too highly the value of press criticism in the premises, to be either offended or discouraged by them. On the contrary he both invites and challenges them. For, as in the economy of life, it is only after the bare grain has been ground between the upper and the lower mill-stones and afterwards "bolted and sifted" that the staff of life can be obtained from it, so the book which cannot go through the ordeal of candid, or even of uncandid, criticism, neither can nor ought to live.

## CHAPTER VII.

**State Expenses and Distributive Shares of the Spirits and Tobacco Taxes—Absurdity of Separate State Taxes for Purposes of the General Welfare, and Free Interstate Intercourse for Purposes of the Federal Autonomy—The "Rock and Vulture."**

The following tabulated statement has been prepared for the purpose of showing the expenses of the several State governments for the year 1882, exclusive of those for counties, townships, or other form of county subdivision, cities, and incorporated towns, and also to show the distributive shares of the several States in the proposed distribution of the Federal tax on production of spirits and manufactured tobacco, on the basis of census population and estimated total annual receipts of $144,000,000. This estimated total coincides with the annual rate of receipts from these two subjects at the time the tax on tobacco was reduced from 16c. to 8c. a pound in March, 1883, and which can hardly fail to be realized again if that tax

be restored; and the State expenses for 1882 have been taken, because that year corresponds more nearly in point of time with the period of highest development of this taxation.

The territories and the District of Columbia have not been included in this statement, for the reason that the expenses of the general civil administration in them are paid, in part at least, from the national treasury, instead of from taxes on polls and property valuations, as in the several States. For this reason State populations only have been used in ascertaining the several distributive State shares, and the fractional parts of a dollar have been disregarded. The total State population by the census of 1880, is 49,379,340, and the *per capita* rate of distribution very nearly $2.92, but disregarding the large fraction, that of $2.91 has been used. The sums in the column for State expenses have been taken from the "American Almanac" for 1883, and the author acknowledges with satisfaction, that to this invaluable collection of yearly statistics, he is indebted for the first hint or suggestion which has led to the preparation of these pages.

| States | Expenses for 1882 | Distributive shares |
|---|---|---|
| Alabama | $918,589 | $3,763,889 |
| Arkansas | 1,331,130 | 2,335,347 |
| California | 4,418,362 | 2,516,259 |
| Colorado | 279,565 | 565,491 |
| Connecticut | 1,646,432 | 1,812,057 |
| Delaware | 94,259 | 426,629 |
| Florida | 361,201 | 784,224 |
| Georgia | 1,713,507 | 4,487,743 |
| Illinois | 3,167,121 | 8,956,604 |
| Indiana | 3,766,603 | 5,756,855 |
| Iowa | 1,257,131 | 4,727,629 |
| Kansas | 814,907 | 2,898,638 |
| Kentucky | 1,946,747 | 4,797,687 |
| Louisiana | 1,750,555 | 2,735,242 |
| Maine | 1,435,460 | 1,888,408 |
| Maryland | 1,757,469 | 2,720,684 |
| Massachusetts | 8,113,860 | 5,188,777 |
| Michigan | 2,951,513 | 4,765,286 |
| Minnesota | 1,015,861 | 2,272,049 |
| Mississippi | 848,165 | 3,292,947 |
| Missouri | 1,430,869 | 6,309,895 |
| Nebraska | 533,757 | 1,316,489 |
| Nevada | 321,078 | 181,019 |
| New Hampshire | 461,101 | 1,009,743 |
| New Jersey | 1,104,308 | 3,291,572 |
| New York | 13,896,198 | 14,791,154 |
| North Carolina | 496,720 | 4,073,272 |
| Ohio | 4,977,189 | 9,306,360 |
| Oregon | 272,598 | 408,574 |
| Pennsylvania | 5,024,766 | 12,463,212 |
| Rhode Island | 794,685 | 804,705 |
| South Carolina | 745,129 | 2,867,129 |
| Tennessee | 631,651 | 4,488,264 |
| Texas | 1,769,879 | 4,631,989 |
| Vermont | 582,053 | 1,641,989 |
| Virginia | 2,816,859 | 4,401,564 |
| West Virginia | 797,612 | 1,789,704 |
| Wisconsin | 1,186,307 | 3,828,096 |

The census report for 1880 shows that the total aggregate taxes on property valuations, under State tax laws, for all purposes, viz.: for State, county, township, or other form of county subdivision purposes, including cities and incorporated towns, amounted to $313,000,000, in round numbers, for that year. It is to be regretted that in this official total aggregate of State taxes on taxable property valuations, throughout the United States, those for township or other form of county subdivision have been "lumped," or included in those for cities and incorporated towns, so that it is impracticable to ascertain from the census report how much of this total aggregate is peculiar to each. Assuming, however, that one half of the total aggregate of $313,000,000, viz. $156,000,000, to be on account of cities and incorporated towns,—(and this assumption is warranted by statistics derived from other sources)— and the other $156,000,000 to have been paid on account of State, county, and township, or other form of county subdivision expenses, the Federal excise taxes on production of spirits and manufactured tobacco alone would suffice, or at least could be made to suf-

fice, for payment of these last-named State and local expenses throughout the United States; and this without State taxes on any thing whatever for such purposes, whether polls, property valuations, or any thing else, or checking agricultural production of the constituent elements of the taxed productions.

In concluding this branch of the subject, it is deemed pertinent to remind the reader, that this yearly aggregate State tax of $313,000,000 on property valuations, reported in the census of 1880, is for support of the general civil administration under exclusive State jurisdictions which are inseparable from "the general welfare of the United States," and is exclusive both of poll and other specific taxes not governed by valuation, laid and collected by separate State authority, and applicable to the same general purpose; as also exclusive of the taxes laid and collected for other purposes by the Federal authority. If all these be added to the $313,000,000 aggregate State taxes on property valuations, the grand total would stagger belief. The reader is further reminded that this aggregate $313,000,000 direct State tax on property valuations, has not been laid

and collected equally from the whole property in the several States, but only from so much of it as could be found and assessed for taxation, or as has not been exempted from taxes for State and local purposes by judicial action or by act of Congress. It represents the State and local taxes paid on only seventeen billion dollars money value that could be found and assessed, as against probably treble that amount, which could not be reached by State tax laws under the provisions of Section 2, of Article IV., of the Federal Constitution, or has been exempted from State taxes by act of Congress. While probably not a farm and its implements, nor a workshop and its fixtures and machinery, nor a stock of goods, nor thousands of other equally visible but little remunerative subjects of value to their toiling owners, have been able to avoid this taxation, it is impossible to know how much, in other and invisible forms of wealth, owned for the most part by those best able to bear the burdens of State taxes, escapes paying taxes for any purpose. How much, nobody can tell. We only know that while it is impossible for small property owners to escape

the vigilance of the State tax assessors, there is ample opportunity for large classes of wealth to escape them; and from the wide discrepancy in amounts between the seventeen billions of taxable property values that are found on the tax lists and reported in the census, and the reputed forty-eight or fifty billions which make up the aggregate national wealth in all the States, we know that some, and probably most of those who can avoid paying taxes, have been making the most of their opportunities to do so. And in this connection it seems pertinent to add, that the only possible ground for hope of putting large and small property owners on an equal footing of taxes on property valuations for State and local purposes, is to be found in not taxing the property of either. While the census statistics of State taxes on valuations show that little of the aggregate wealth of the different States is reached under the system of State taxes on valuations, statistics derived from other sources show, with no less certainty, that of the little that is reached by it, the valuations pertaining to property owners of less than $5,000 each, exceed many times over in aggregate amount

that of those of this amount and over. This general statement will be sustained by scrutiny of the tax list, to be considered in a subsequent chapter.

Three hundred and thirteen million dollars of taxes on valuations, exclusively for purposes of the general civil administration in the several States, is probably the most enormous direct tax practised under any form of government in the world for like purposes, and is mainly the result of our having retained the worst while discarding the best features of taxation under autonomous forms, whether monarchical or republican, coupled with that indispensable Section 2 of Article IV. not having been more closely associated with its counterpart in Paragraph 1 of Section 8 of Article I. in Federal legislation. These two constitutional provisions afford the essential marks which distinguish Federal from autonomous constitutions in respect to taxation, as well as in respect to rights of trade and citizenship among Federal States. Thus far, however, in the history of Federal legislation under these allied provisions of the Constitution, either of which is but the equivalent given for the other, while no atten-

tion has been paid to the one respecting the power of taxation, the other has been rigidly enforced in respect to interchangeable rights of trade and citizenship among citizens of the several States. It is this neglect of the one and this rigid enforcement of the other of these provisions that has destroyed the State power of excise taxation, and loaded most of the States with burdens of direct taxes on property valuations which they are unable to bear; and in the amendment of this error lies the only hope for materially lessening these burdens, and thereby perpetuating the general civil administration under exclusive State jurisdiction over the subjects of it.

Neither tariffs for protection, nor tariffs for revenue, nor any compromise between these two; nor more or less silver or gold or greenbacks; nor labor reforms, nor reforms in the relations of labor and capital to each other; nor reforms in office-holding, nor in office-getting; nor reforms in methods of administration; nor changes from one party to another; nor any other scheme yet devised or suggested, can touch the malady. They may palliate—perhaps aggravate—but they cannot cure it:

and so long as we persist in applying the principles of autonomous State taxation under Federal forms, and Federal principles of trade and intercourse for purposes of the Federal autonomy, the malady will stick to the patient. If all the remedies suggested, or any selection from them, were put in practice to-day, the evils of direct State taxes on property valuations, and existing exemptions from taxes allowed on production and consumption of luxuries and on incomes, would still exist and flourish in full vigor, though other essential interests languish and die. The experiment could but repeat past experiences, and prove as profitless as the fabled pouring of water into the sieve, or the labor of Sisyphus rolling the stone, and leave us at the end of it, but as the victim bound to the rock, with the vulture tearing his vitals, or as Tantalus, dying of thirst and hunger, with water at his lips and food just out of reach. Nothing but popular conviction of the need for change, both in the methods and in the subjects of taxation for support of the general civil administration under separate State authority, can secure for the people of all the States, the full measure of

relief provided by the Federal Constitution against unequal taxation. These provisions for the general welfare of the whole people, without distinction in interests among them, have hitherto been wrested to that of classes of them only, through vicious systems of taxation; and it will be the fault of the great majority both of interests and of individual tax-payers, who have been thus wronged under the forms of law, if from want of concert among themselves, these systems and methods of taxation shall become perpetual. This mingling of autonomous State taxes and Federal principles of free interstate trade and citizenship for purposes of the Federal autonomy, is contrary both to the letter and spirit of the Federal Constitution.

It may be as well to state in this connection as elsewhere, that with the meagre resources of the States for defraying current expenses under this mongrel system of taxation, the aggregate total bonded indebtedness of all sorts in the several States, for State and local purposes of the civil administration in them, as stated in the census of 1880, was $1,056,406,208, while the Federal public debt at the same time was

$2,120,415,370, and that in the five years next following, while the Federal debt had been reduced more than one billion dollars in amount, the above total State indebtedness remained substantially unchanged. This ratio of indebtedness between the two, and the contrast in reduction, shows that if the State indebtedness shall ever be materially reduced, such reduction can only be from increased revenues, which shall not add increased State taxes on polls and property valuations.

## CHAPTER VIII.

**The "Blair bill" for Education of the Illiterate—Relief of the Lettered Poor from Unnecessary State Taxes as Essential to the General Welfare as Education of the Illiterate—Better Founded in Public Policy—And Not Obnoxious to the Charge of Class Legislation.**

The following copy of a letter from the author to a newspaper for publication, and published about the time of its date, is reproduced here as well to point the foregoing statement of State debts and distributive shares as to emphasize the proneness of Federal legislation to run in the narrow ruts of class interests rather than in the broad channel marked out by the Federal Constitution for the general and equal good of all interests, without distinction of class or condition:

*To the Editor of the Richmond Dispatch.*

DEAR SIR:—Some time in January my attention was attracted to your discussion of the "Blair Bill," which proposes the distribution by Congress of some seventy million dollars from the Federal spirits and tobacco taxes in the next seven years

among the several States, on the basis of illiteracy, to be used by the States only for educational purposes. It seemed to me that if such appropriation could be made by Congress on the basis of illiteracy, and for the designated benefit of a particular class, other occasions for such class legislation might, with equal propriety, be found, and so a pernicious principle in Federal legislation, which has been constant and uniform from its beginning, could now be made perpetual To avoid this objection, my letter to you proposed that Congress, instead of appropriating the meagre seventy million dollars by annual instalments through a period of ten years for education of the illiterate, should exercise its concurrent authority with the several States, to tax the production of all sorts of spirits and manufactured tobacco, and distribute the net proceeds of the whole tax among the several States, on the basis of census population, rather than on the basis of illiteracy, to be used for the general purposes of the State governments. Instead of $70,000,000 in seven years, this last proposal would provide a yearly aggregate of not less than $150,000,000 for general purposes of the States, in perpetuity, instead of for a single purpose for a very short time, and each State might then meet claims on it for education as well as for other purposes, without resort to existing burdensome rates of taxation on property valuations. Your objection to this last-named proposal, as stated at the time in your columns, was to the effect that the proposal was in substance the same as that

which had been proposed by Mr. Blaine,* and abandoned by him and his party without a word in its favor from either, in the course of the presidential campaign which followed; and it is mainly to correct your misapprehension of my proposal thus stated by you that I now trouble you with this letter.

The essential difference between the proposal

* The date 1882 in the third line of the preface to the first edition, and that of November 28, 1883, on page 121 following, were intended by the author as a cypher, the key to which it was thought would be readily found by earnest inquirers after the fact of authorship. As this cypher has, however, proved too obscure for the intended use, the author now deems it proper to disclose both the cypher and its key; and also to add that he now has in his possession the original petition to Congress, signed by seventeen petitioners, of whom thirteen are Democrats, and bearing date November 27, 1882, praying Congress to distribute the spirits and tobacco taxes among the several States for expenses of the State civil administrations, distinctively upon the ground of constitutional obligation on the part of Congress. The petition referred to, however, was not submitted for the action of Congress, but was afterwards returned to the author by the member of the House of Representatives having charge of it, with the explanation that upon conference with other members of the House, it was thought best not to offer the petition on account of its novelty at that time. Mr. Blaine's subsequent brief advocacy of such use of *the spirit tax* as a way to get rid of the then existing "surplus," seems to have led to the identifying of his name with the proposal of the petition—which is radically different in principle, viz.: that of the petition proposing definite and permanent provision for support of the civil administration, while that distinguished by association of Mr. Blaine's name and advocacy for only a brief period proposed only such aid to the civil administration as might result from disbursement of a temporary surplus in the Federal treasury.

contained in my letter to you and that of Mr. Blaine, as stated in his letter to the *Philadelphia Press* under date of November 28, 1883, is, that my proposal includes the Federal tax on production of both spirits and tobacco, while Mr. Blaine's proposal includes the tax on spirits only. I believe you are right in saying that neither Mr. Blaine nor any of his party had any thing to say in favor of his proposal during the presidential campaign that followed the publication of it. I do not, however, concur with you in ascribing this silence to a conviction on the part of either that his proposal was thought to be untenable. Just why Mr. Blaine, after publishing his proposal and fortifying it by an argument which, to my apprehension, has not been successfully controverted, chose to abandon it without further word in its favor, can, in my judgment, be explained only on the theory that his proposal was found, on further inquiry, to be hostile to the interests and policies of the party which he came to represent as a candidate for the presidency. That party has uniformly sought "to *promote* the general welfare," by adjustment of tariff duties and congressional legislation in the interest of particular classes; and the probability seems to be, (for none can speak positively of another's motives,) that when Mr. Blaine realized that his proposal to distribute the tax on spirits among the several States for their necessary expenses, would defeat his party's established policy of class legislation, by stripping the Federal treasury of the funds necessary to its execution, he

concluded that the best way out of the blunder of having proposed such a thing, would be to say nothing more about it, in the hope that Democratic aversion to Congress doing any thing under "the general welfare" clause of the Constitution, would keep them, too, from disturbing the old order of things.

As to the "Blair Bill," it may be said that if not in agreement with constitutional provisions, it is at least in harmony with long-established practice under them; and if this practice is to be perpetual, the States having the largest percentage of illiteracy would be warranted in profiting to the full extent of its provisions in their favor. We, here in Indiana, would be no indifferent beneficiaries under its provisions if it shall become a law; though I confess to a feeling of reluctance to accept the State's quota under it in full acquittance of a juster claim for many times the amount of it on essentially different grounds.

Very truly and respectfully,

WM. H. JONES.

FORT WAYNE, February 6, 1885.

To the brief suggestions of the last paragraph of the above letter it may be added that the percentage of those in the several State populations who are classed as "literate," but need the aid and co-operation of the Federal authority to relieve them from hard and unnecessary State taxes, is much larger than that of the

"illiterate," and their relief in the matter of these taxes more essential to "the general welfare of the United States" than partial education of the "illiterate" can be. Are not the poor and overtaxed small property owners in the several States, whether lettered or illiterate, as deserving beneficiaries of government appropriations or *per capita* distributions from the Federal treasury, as the "illiterate"? The obligation of the Federal government to these two classes of small property owners on one hand, and to the "illiterate" on the other, is one of justice to the first, while only one of public policy towards the other—a bringing of "tithes of mint, anise, and cummin"—as compared with the weightier matters of law. "This ought ye to do, and not to leave the other undone."

The percentage of overtaxed lettered people is greatest where the percentage of illiterate is least, and is by far the greater of the two. Analysis of county tax-lists throughout the United States will doubtless show this, if ever made. Why then single out one class for government aid on the basis of *per capita* distribution among its numbers, and at the same time

leave a yet larger class uncared for, and whose relief from needless taxes is quite as essential to "the general welfare of the United States," as education of the illiterate can be? Besides, if the provisions of the Federal Constitution in respect to taxation "to provide for the general welfare of the United States," so often referred to in these pages, were complied with towards all the people of all the States, could not each State then provide for the education of its own "illiterate," in accordance with that social order which is made perpetual in it by the Xth Amendment? The States which may not need additional educational facilities, on account of having already provided ample ones by taxing their people, are none the less entitled to their *per capita* share in such *per capita* distributions from the Federal treasury, in order to lessen State and local taxes for other public objects, not less important or necessary to them, than education of the illiterate in other States.

## CHAPTER IX.

**Aggregate State and Local Public Indebtedness—Its Relation to the General Welfare—State Debts Not Materially Lessened during the Period When the Federal Debt was being Practically "Wiped Out"—This Public Indebtedness a Subordinate National Debt of the United States—And its Creation the Result of Wrong Intrepretation of the Federal Power of Taxation.**

It has been stated at the close of Chapter VII., that according to the census report of 1880, the public debt of the United States in 1880 was $2,120,415,370, and that the aggregate State, county, and municipal debt of all sorts was $1,056,406,208 at the same time. While there is no ground to suppose that this last form of public indebtedness has been reduced in amount, during the interval since 1880, the annual report of the Secretary of the Treasury, for December, 1885, shows that on the first day of November preceding, the public debt of the United States had been so far reduced in amount, as that the interest-bearing part of it which would remain after being

credited with assets applicable to that purpose, would be many million dollars less in amount, than the above aggregate of State and local indebtedness. The secretary's report for the subsequent December, 1886, shows a still further and material reduction in the amount of the public debt of the United States, and invokes the serious attention of Congress to the reduction of the Federal revenues. These official statements show that it is the aggregate public indebtedness of the several States which has now come to be the paramount subject for consideration in connection with the national finances. The fact that this aggregate State, county, and municipal indebtedness has not been reduced in the same ratio as that of the public debt of the United States, but, on the contrary, has remained substantially unchanged during the interval since 1880, can be owing to nothing else than to a lack of corresponding resources for paying it. The plain inference from there having been so large reduction in amount of the public debt of the United States during the five years from 1880 to 1886, while there has been none at all in that of the aggregate public indebtedness of the several

States, would seem to indicate a redundancy of revenues for the first, and a corresponding deficiency of revenues for payment of this second class of indebtedness.

What shall be done with this aggregate State and local indebtedness, has thus become an important if not a vital question in respect to "the general welfare of the United States." The fact that this indebtedness has been created for objects of public utility, inseparable from the general civil administration under the several States, and therefore identified with "the general welfare of the United States," would seem to entitle it to such co-operation on the part of the Federal authority, in the exercise of concurrent powers of taxation with the several States, as will enable the States to apply to its gradual extinguishment revenues to which they are entitled by virtue of concurrent constitutional right, but which can only be made effective for this, or any other purpose, by exercise of the Federal authority.

This form of public indebtedness is the necessary result of erroneous interpretation of the Federal power of taxation, and withholding its co-operation with that of the several States to

provide for essential objects of public utility, by the easy methods of excise taxation. Had such co-operation between Federal and State powers of excise taxation been resorted to, there could have been no occasion to create this class of public indebtedness; but the failure to exercise the power of Federal taxation concurrently with that of the several States, has subjected the States to the triple alternative of going without objects of public utility, or of going in debt for the means to provide them, or else of resort to burdensome rates of taxation on property valuations to provide for them: and this vast total of State indebtedness is the result—a result which is wholly anomalous under civil government elsewhere in the world, and for which there can be no hope for ultimate payment, except from that co-operation in the exercise of Federal and State powers of excise taxation, which would have avoided the necessity for its creation. The States, counties, and cities have been obliged to create debts for public expenses, instead of paying cash for them out of current revenues supplied by the easy methods of excise taxes on production and consumption of luxuries, and

on incomes. Co-operation by the Federal and State authorities in excise taxation of the production and consumption of spirits and manufactured tobacco alone, without resort to any other form of internal excise taxes, would provide for indispensable objects of the general welfare of the United States which have hitherto been exclusively supplied by direct State taxes on property valuations, for support of the general civil administration, under exclusive State jurisdiction over the subjects of it. Such co-operation seems not only necessary to the ultimate payment of existing State, county, and municipal public indebtedness, with the same ease and rapidity with which the public debt of the United States has been extinguished, but will remove all just occasion for the creation of new public indebtedness of like character in future; or if it shall not wholly remove the occasion for creating new debts for like purposes, it will at least subject the creation of them to the local control of tax-payers, both as to the amount and purpose of them.

If it be asked whether these suggestions are intended to convey the idea that it would be competent for the Federal authority to co-op-

erate with the several States in measures of excise taxation for direct payment of city or other municipal debts, it is answered no; but that the co-operation of the Federal and State authorities in excise taxes for payment of State and other local expenses of the State administrations, would so far lessen taxes for these purposes, that those for cities and incorporated towns would be correspondingly lighter; and that if cities and incorporated towns were relieved from taxes for State and county purposes, the ultimate payment of existing city debts might be assured without hardship or possible sacrifice of the interest of property owners. The general rate of tax on property for both State and county purposes in cities, is little if any less than two per cent. per annum on property valuations in them, and that for city purposes hardly less than two per cent. additional.

If we consider the close relation of this secondary form of national indebtedness, to the general welfare of the United States, and the impracticability of paying it from State taxes without large increase in the rate of tax on valuations, the inducements to exercise of

concurrent powers of Federal and State excise taxes seem sufficient to compel resort to it, in order to avoid the alternative of increased taxes on property, or repudiation. The fact that during the twenty years between 1862 and 1883 the Federal excise taxes on spirits and manufactured tobacco yielded the enormous aggregate of $1,796,000,000 (which was paid with less hardship or difficulty than any other tax, Federal or State), and that the Federal government no longer needs the taxes collected from these two sources for any other purpose than to provide for the general welfare of the United States, ought to be decisive of the proposal to apply them to that purpose. During the twenty years referred to, the national production of gold and silver was $1,298,763,792, or about a third less than the aggregate spirits and tobacco taxes during the same period; and while the collection of the latter cost less than three and a half to four per cent. of their total amount, the gold and silver cost, in other forms of value, dollar for dollar of all that was produced.

The proposed distribution of the internal revenue taxes from spirits and manufactured

tobacco, would produce the effect of capitalizing taxable property valuations throughout the United States, at existing rates of State taxes on them, by letting the amount of yearly taxes on them remain in the pockets of owners, instead of being taken out of them for State and county expenses. The abstention from use of these abundant resources for paying State expenses of the general civil administration, from a fear of theoretical tendency towards "centralization" which their use would seem to imply, is suggestive of the boiling of the kid in the mother's milk provided for its sustenance, and affords a parallel to the case of the Bourbon who died of starvation from fear of being poisoned if he should eat the food prepared for him in his own household; or that of the man who, accustomed to the method of getting maple syrup, tapped his apple trees for cider instead of expressing it from the apples that grew in abundance and were going to waste on the limbs of the trees.

## CHAPTER X.

**Analysis of a County Tax-List—No Trace of Excise Taxes Found on It—Three Classes of Tax-Payers—Reasons for Their Classification—Why State Taxes on Valuations are Necessarily Unequal—Difference in Numerical Percentage of the Several Classes—Unequal Rates of Taxation as Shown in One Township, Illustrate Like Inequalities in All the Others—Penalties and Delinquencies as Related to the Rate of Tax—No Penalty or Delinquency in the System of Excise Taxes, and No Revenue from Direct Taxes without Them—Proposal to Withhold Protection of the Law from Personal Property Not Listed for Taxation.**

[NOTE TO SECOND EDITION.—The author never turns to this chapter, but the familiar story of "The Missionary and the King of Siam" recurs to him. Though truer than most preaching, the chapter sounds so like exaggeration in the unaccustomed ears of some, who, like the king, having always lived, as it were, in a hot climate where water never freezes, and can therefore form no conception of the quality of ice, at once fall into "the shivers" at the touch of the cold facts of this "analysis of a county tax-list." Unable to

account for these facts otherwise, and afraid to deny, or openly attempt to contradict them by proofs, the weak resort of ridicule and scoffing seems to be the only resource left them. A noted case of this sort of "the shivers," is in the mind's eye at this instant; and the wild capers cut by the subject of it at the bare touch of the missionary's ice, are ludicrous in the extreme.

Though, like the king, this man could listen with patience and apparent belief to stories on other subjects no less preposterous than that of "Jonah swallowing the whale," he broke down and fell at once into "the shivers," on reading in this chapter about the class of small property owners having to pay two thirds more taxes on their property valuations, than the class of large property owners have to pay on theirs. This story proved too much for his limited faculty of belief; and he therefore did not hesitate to assert—as it was his privilege to assert if he believed not—that the book which contained it was a disgrace to the man who wrote and published it.

Now the author himself admits that it is hard of belief—in fact a thing incredible unless amply supported by proofs—that such a state of things as is set forth in this chapter, should exist anywhere in the world. But *when the proof is brought*—the only sort of proof the subject is susceptible of—such proof as that by which the naturalist safely and infallibly announces the existence, and fixes the characteristics of species, on examination of a fragmentary specimen of it,—the standing out against the truth thus established, is like the refusal of the king of Siam to believe the missionary's story, because it belied his own limited and personal experiences in respect of rivers freezing over with ice strong enough to bear the weight of a big elephant. Like instances of incredulity have never failed to make themselves both known and felt, as obstacles in the way of a great truth on its first announcement. The familiar case of Lord Bacon still refusing to accept the true theory of the movements of the planets in space, after it had been demonstrated by aid of the telescope, may be used for illustration. But earnest inquirers after

truth, who had provided themselves with telescopes, did not straightway discard or throw them away because "the greatest, wisest, and meanest of mankind," ridiculed and scoffed at their use. Perhaps, as he was "meanest," though "wisest," "his eyes were holden," that *he should not*, while others nobler but less wise, *should see* this new glory of the Heavens. And so, after their example, the author stands by this analysis, though all Lord Bacons, and the like of him, if there be such, shall scoff at and revile it.]

The following tabulated analysis of a county tax-list has been made for the purpose of showing the need for Federal excise taxes on production and consumption of spirits and manufactured tobacco, to lessen, if not remove, existing unequal and insufficient taxes on polls and property valuations for State and local uses. The tax list examined has not been selected with reference to any advantage or disadvantage, real or supposed, which it may bear relatively to other counties in the State, in respect to rate of tax on valuation, or aggre-

gate tax in proportion to population, or any other element, which does not apply as well to any other county in the State. Though in territorial extent this county is somewhat larger than any other in Indiana, and contains the third city of the State in point of population, and is the second in manufacturing industries, yet in other respects, and particularly as respects agricultural and farming products, it may be accepted as affording a fair average among the counties of the State, of the existing system of taxation for State, county, and township, or other form of county subdivision purposes. Serving as well for this use as any other of the ninety-two counties of the State, its tax list has been used for the purpose of analysis only because of greater convenience as the home of the author. Of course the showing of a single county is too narrow a basis for the claim to national revolution both in method and subjects of taxes for support of the general civil administration in all the States, and all that is claimed for it is the seemingly reasonable inference, that if in one county of the State direct taxes on polls and property valuations for State, county, and township ex-

penses from which both production and consumption of spirits and manufactured tobacco are exempt, have been needlessly heavy, unequal, and burdensome, the same condition of things may be supposed to exist in the other counties of the State under the same system of taxation; and if in one State, then by like inference, in other States also.

So far as is known to the author, the present is the first attempt to analyze the State tax-list of a county, with a view to showing the practical working of the existing State systems of direct taxes on polls and property valuations on different classes of property owners, and the inequalities and individual hardships inseparable from the general system. That this is the first attempt of its kind is stated, as well to give some idea of the difficulty in the way of making it, as to invite fair and intelligent criticism of its statements and conclusions on that account.

If the reader shall ask what warrant exists for dividing tax-payers into the three distinct classes of railroads, large property owners, and small property owners, the answer is, that there is no other warrant for this classification than the common thought of the people that these

classes do exist as distinct classes among taxpayers. As to that of railroads, there is no difficulty in distinguishing it from either or both the others, as its existence is recent, and peculiar to the period since establishment of the Federal constitution. As to the second and third classes, however, of large and small property owners, there is difficulty of like clear distinction of one from the other, growing out of the important question where the line between them shall be drawn. In any event, this dividing line, like that drawn by the statute of limitations, or that in the statute of exemptions from sales under sheriff's executions on judgments founded on contracts, and numbers of like cases in both civil and in criminal procedure, the line of distinction must be purely arbitrary; and unless it be supported by common assent as being just in itself, will serve to obscure and confuse the subject, rather than to make it plainer. In the present case this dividing line between the two classes of large property owners and small property owners, is drawn on the valuation of $5,000; those taxed on valuations of this sum and over being set down as large property owners, while those taxed on

valuations less than $5,000 are set down as small property owners. These two classes are thus distinguished from each other, because this distinction seems to respond more nearly than any other to the general thought of people, that while a tax-payer who is worth $5,000 or more can hardly be reckoned a poor man, so on the other hand one who is worth less than $5,000 can hardly be called a rich one. The analysis is therefore made on this basis, and if the basis shall be accepted as reasonably satisfactory for the purpose it is made to serve, there must be corresponding satisfaction in the use made of it. At any rate it can serve the purpose of distinction until some other basis of classification shall be suggested, having better grounds to justify it. But whether the classification used be the best and most equal that may possibly be devised, can be no valid ground for objection to the present one; for the reason that none other that may be suggested could change or modify the evils disclosed by this one; and a single good point is sufficient on general demurrer. It is hoped this preface will sufficiently explain the principles and the object of the following tabulated statement, viz.:

| Analysis of the Tax List of Allen County, Indiana, for the Year 1883. | City of Fort Wayne. | Wayne Township. | Aboile Township. | Adams Township. | Jackson Township. | Jefferson Township. | La Fayette Township. | Cedar Creek Township. | Lake Township. | Eel River Township. | Scipio Township. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Whole No. of Tax-payers | 9,167 | 1,093 | 379 | 1,052 | 214 | 591 | 500 | 632 | 511 | 483 | 179 |
| Total valuation | $12,026,980 | 1,440,830 | 569,610 | 1,315,975 | 156,285 | 583,695 | 476,765 | 567,540 | 561,135 | 498,100 | 144,370 |
| Total tax paid or delinquent. | $194,376 | 23,607 | 10,971 | 25,135 | 3,531 | 10,343 | 9,400 | 12,007 | 10,932 | 9,576 | 2,924 |
| No. railroad valuations. | 5 | 5 | 3 | 3 | 1 | 3 | 1 | 0 | | 1 | 0 |
| Aggregate railroad valuations | $546,135 | 233,845 | 142,405 | 290,000 | 38,330 | 171,551 | 20,400 | 0 | 141,040 | 30,635 | 0 |
| Aggregate railroad taxes | $6,683 | 9,164 | 2,224 | 2,572 | 713 | 2,358 | 348 | 0 | 1,359 | 497 | 0 |
| No. of others taxed $5,000 and over | 346 | 45 | 5 | 28 | 1 | 2 | 4 | 10 | 6 | 7 | 2 |
| Aggregate valuation of these | $5,407,996 | 478,140 | 38,434 | 262,000 | 6,160 | 12,895 | 26,140 | 79,018 | 30,355 | 44,075 | 11,425 |
| Aggregate tax paid by them | $61,316 | 6,991 | 659 | 2,992 | 110 | 199 | 466 | 1,374 | 683 | 714 | 195 |
| No. taxed on valuations less than $5,000. | 8,816 | 1,043 | 371 | 1,031 | 212 | 586 | 495 | 622 | 504 | 475 | 177 |
| Aggregate valuation of these | $6,102,249 | 728,140 | 388,771 | 646,450 | 111,805 | 379,249 | 430,225 | 488,522 | 379,900 | 423,390 | 133,945 |
| Aggregate taxes paid by them | $126,377 | 7,452 | 8,088 | 14,687 | 2,708 | 7,786 | 8,586 | 10,633 | 8,887 | 8,365 | 2,729 |
| Delinquent taxes, penalties, etc. | $22,465 | 2,994 | 789 | 1,882 | 387 | 820 | 580 | 1,384 | 957 | 929 | 399 |
| Whole No. of polls | 4,716 | 346 | 155 | 272 | 68 | 245 | 235 | 275 | 212 | 210 | 92 |
| Amount of poll taxes | $12,969 | 692 | 310 | 937 | 170 | 490 | 470 | 687 | 530 | 472 | 230 |

| Analysis of the Tax List of Allen County, Indiana, for the Year 1883. | Monroe Township. | Madison Township. | Maumee Township. | Marion Township. | Milan Township. | Perry Township. | Pleasant Township. | Springfield Township. | St. Joseph Township. | Washington Township. | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Whole No. of Tax-payers | 797 | 529 | 209 | 428 | 514 | 463 | 518 | 716 | 703 | 768 | 20,446 |
| Total valuation | 480,840 | 475,030 | 203,120 | 543,420 | 439,995 | 592,795 | 507,555 | 527,885 | 638,890 | 886,195 | 23,637,010 |
| Total tax paid or delinquent | 10,615 | 10,646 | 5,125 | 9,331 | 9,830 | 10,341 | 9,952 | 10,487 | 14,024 | 14,879 | 418,043 |
| No. railroad valuations | 1 | 2 | 1 | 1 | 1 | 2 | 1 | 0 | 0 | 2 | 34 |
| Aggregate railroad valuations | 44,685 | 118,645 | 78,530 | 17,180 | 43,665 | 48,005 | 23,900 | 0 | 0 | 116,095 | 2,105,936 |
| Aggregate railroad taxes | 1,929 | 2,206 | 1,617 | 259 | 811 | 1,940 | 384 | 0 | 0 | 1,636 | 27,586 |
| No. of others taxed $5,000 and over | 3 | 2 | 1 | 14 | 2 | 11 | 7 | 3 | 15 | 18 | 532 |
| Aggregate valuation of these | 16,905 | 14,745 | 23,970 | 88,650 | 11,130 | 89,972 | 53,805 | 16,815 | 96,980 | 143,110 | 6,954,620 |
| Aggregate tax paid by them | 305 | 299 | 485 | 1,371 | 226 | 1,368 | 887 | 272 | 2,946 | 2 196 | 81,105 |
| No. taxed on valuations less than $5,000. | 793 | 525 | 207 | 413 | 511 | 450 | 510 | 713 | 688 | 748 | 19,880 |
| Aggregate valuation of these | 359,450 | 341,640 | 101,620 | 437,590 | 385,210 | 454,818 | 429,850 | 571,090 | 541,910 | 626,980 | 14,576,454 |
| Aggregate taxes paid by them | 8,737 | 8,412 | 3,023 | 6,701 | 8,703 | 7,033 | 8,681 | 10,215 | 11,078 | 11,042 | 309,352 |
| Delinquent taxes, penalties, etc. | 3,640 | 1,029 | 662 | 526 | 992 | 582 | 1,036 | 1,167 | 2,333 | 1,543 | 47,465 |
| Whole No. of polls | 286 | 231 | 84 | 202 | 247 | 199 | 270 | 299 | 270 | 319 | 9,386 |
| Amount of poll taxes | 670 | 577 | 210 | 404 | 494 | 296 | 440 | 498 | 540 | 638 | 22,860 |

The most noticeable features of the foregoing tabulated statement of a county tax-list, are the absence from it of excise taxes of any kind, and the very large, or rather the overwhelming preponderance, in numerical percentage, of those who pay taxes on valuations of less than $5,000 each, as compared with that of those who pay taxes on valuations of this amount and over. Out of the whole number of 20,446 tax-payers on the list, only 566 pay on valuations of $5,000 and over, while 19,880 pay on valuations less than $5,000. If there existed ground for belief that the property of the 566 had been included in the assessment as completely as that of the 19,880, there would be less ground for complaint of inequality in the taxation.

But has the assessment been equally exact and complete in respect to each of these two classes? While there is ground for belief that it has not been equally exact and complete, still there is no direct and explicit proof to the contrary, nor, in the nature of the case, can there be. In the absence of direct and explicit proof, however, to show that all the property of the 566 has been as completely found

and assessed for taxation as that of the 19,880, the chain of circumstantial evidence tending to show that it has not been so found and assessed, is hardly less convincing than direct and explicit proof of the fact would be. As to lands and tangible personal property, there is no more ground for suspicion of failure to assess the property of the one class, than that of the other. The difficulty lies in finding out what is not visible to the assessor, and which on this account is left to such voluntary disclosure as the owner of it may choose to make. Its amount is an unknown quantity in the problem of direct State taxes, and which may be conjectured to fill the wide gap between the ascertained total valuations of taxable property reported in the census of 1880, as being seventeen billions of dollars in round numbers, and that other perhaps equally reliable but unofficial statement, which reckons the aggregate wealth of all the States at the same date at forty-eight billions of dollars. This difference of thirty-one billions of money value between the property that is taxed, and that which is not taxed,—in itself nearly double the former,—demonstrates the inequality of the system of

taxation under which it is perpetuated. Taking the seventeen and the forty-eight billions of dollars as representing the relative ratio of exemption from State taxes enjoyed by the 566 and the 19,880, some proximate idea may be formed of the disparity and inequality between these two classes of tax-payers, under existing systems of State taxation, for support of the general civil administration in the United States. It means simply heaviest burdens of taxes upon those least able to bear them, and largest exemptions from taxes to those who stand least in need of any exemption at all from taxes. This idea will be further illustrated when we come to consider the relative percentage of taxes paid by the three classes of tax-payers, as shown in the tabulated statement of the county tax-list. Let it suffice for the present to say, that if the valuations of the 566 should be increased by the ratio of the thirty-one billions, and those of the 19,880 correspondingly lessened, these two classes of tax-payers would stand more nearly on the footing of equality in respect to taxes for support of the general civil administration throughout the United States, than they now do.

The difference in the numerical percentages of these classes is hardly less noticeable than the ratio of their respective aggregate valuations to the total amount of taxes; that of the less than $5,000 class being so nearly the whole number of tax-payers that both the others put together make but an insignificant fraction in the 100 as compared with it—the one being $97\frac{2}{10}$ to $2\frac{8}{10}$ for both the others, while recourse must be had to decimals of the unit to indicate the percentage of one of these two; and this the one most influential in shaping general legislation, both in Congress and in the State legislatures, and occupying a larger share of the time and attention of the courts than both the others put together. If this class should pay taxes in proportion to the share of both legislative and judicial provision which it occasions, there would be little ground for just complaint by either of the others on account of high rate of taxes on valuations. And if we turn from this relative numerical percentage of the three classes to that of total taxes assessed in each, that of this otherwise most influential class, though relatively greater than its numbers would seem to indicate, is yet but trifling in

comparison with either of the other two: the percentage of aggregate railroad taxes being but 6½ per cent. of the whole, while that of the other two classes is 19 6/10 and 73 9/10 respectively, the largest percentage of aggregate taxes assessed being that of the class least able to pay it.

Passing from these general features of the tabulated statement of the county tax-list to particular ones among townships and individual assessments, we find that the delinquent taxes pertain exclusively to the class of tax-payers assessed less than $5,000 each in some of the townships, and that if the rate of the tax be computed on the amount of valuation and of the amount of delinquency annexed to it, the rate of tax will exceed the nominal rate of taxes on valuation by the others. Taking Jackson township for illustration, we find the total valuation of the township $156,285, and the whole tax, including delinquencies and penalties for previous years, $3,531. There is but one railroad in the township, and but one other tax-payer in it assessed $5,000 and over. Neither of these two has any delinquent tax or penalty, and we know from the tabulated state-

ment that the aggregate valuation of these two is $44,490, and their aggregate tax $823, which is at the rate of $1.86 tax on the $100 valuation. Deducting the valuations and taxes of these two tax-payers from the aggregate valuations and taxes for the township, there remains $111,795 of valuation, and $2,704 of taxes and delinquencies for the other 212 tax-payers in the township to pay, which is at the rate of $2.42.1 tax on the $100 valuation, as against the $1.86 rate for each of the other two classes of tax-payers.

If it be said that to add delinquencies and penalties to the rate of tax on valuation is unfair, because these are occasioned by the fault or inability of the delinquent to pay, rather than by any intended purpose of the tax law to discriminate harshly or unjustly among individuals or classes of them, the answer is that property owners do not willingly, or purposely, or wantonly incur these penalties or delinquencies; and that these preponderate so heavily among the class of property owners least able to bear them as to make them peculiar to this class, shows beyond any reasonable ground for doubt that the system of taxes under which

they are incurred is unreasonable, unjust, and oppressive, and to be tolerated only from imperious necessity. The feature of penalties and forfeitures for non-payment of taxes is peculiar to the system of direct taxes on property valuations. It can find no place in the system of excise taxes on production and consumption of luxuries, or on incomes. Not only is the small property owner obliged to submit to increased rate of tax on valuation by reason of the non-assessment of part at least, if not of the greater part of that of large property owners, but he is liable at the same time to have his little property sold to satisfy the relatively larger tax than he ought in justice to be liable for. As we have shown by reference to the census and to other equally trustworthy, though unofficial, statements of the aggregate wealth in all the States, not more than one third of this aggregate wealth can be found and assessed for taxation under State tax laws; and that the other two thirds which is thus exempted pertains for the most part to the two classes most able to pay taxes on it, and therefore least entitled to the exemption from taxes enjoyed by them. If this exempted two thirds could be found and

subjected to taxes, the rate of tax would consequently be proportionately less for all classes of property owners. It would make a difference of 63⅜ cents in the dollar to the class of small property owners, who now pay this much in excess of what they would have to pay if the whole property were equally taxed. This terrible injustice of obliging the class of small property owners to pay two thirds more taxes than is paid by others, or else submit to have their little properties sold for default of such payment, is inseparable from the system of direct taxes on property valuations, and is essential to its efficiency. Without this feature the tax list could be no more effective to provide the necessary revenue for support of the several State administrations, than an official recommendation to all citizens to make such voluntary contributions for that purpose as each might think he ought to make. Placed on this footing of voluntary contributions, the State could get but little revenue, or if any, not more than may be found in the box of the missionary society after the most earnest and pathetic appeals. Contrariwise, from the spur of legal obligation, as well as that of natural appetite

under the system of excise taxes, which has neither penalty nor forfeiture for non-payment of taxes, while the tax-payer is his own assessor of the amount of taxes he has to pay, and also fixes the number and periods of the instalments in which they are to be paid, so as to suit himself, the treasury is kept constantly filled, and no man's home or little property has ever yet been sold to satisfy an unpaid excise tax. The pretence, therefore, that it is unfair to include delinquencies and penalties in the rate of taxes on valuation is groundless. So far from being unfair to hold the system of taxes on valuations responsible for the relentless and remorseless penalties and forfeitures which it inflicts, it is but just to say of it that this merciless rigor is the essential condition of its existence.

Even upon the impossible condition that all property in the several States in excess of the seventeen billions ascertained and reported in the census of 1880 could be found and assessed in like manner as the seventeen billions, the system of direct taxes on valuations would still be unequal, as well because no uniform and just rate for ascertaining equal valuation is possible,

as also because under no possible conditions could equal ability be established among tax-payers to pay the equal taxes assessed. The inequality and injustice of penalties and forfeitures for involuntary delinquency would still remain.

The system of taxation which can accept no excuse for non-payment of taxes but that of penalty and forfeiture is barbarous, because it is unnecessary. There is less excuse for it than for imprisonment for debt under execution on a judgment founded on contract. In the case of the involuntary delinquent tax-payer the ground of the penalty and forfeiture is but an implied contract on his part to pay his equal rate of tax with all other property owners in the State, and until the State has compelled such complete assessment of all the property within her jurisdiction she has no moral right to enforce penalty or forfeiture against delinquent tax-payers; for if all the property were assessed the delinquent's rate of tax would be less, and the penalty and forfeiture the more easily avoided; and it is shocking to the moral sense to impose penalty and forfeiture for non-payment of more than the due share. The

State may, if she will, compel the listing and assessment of all the personal property within her jurisdiction, so far at least as to acquit herself for all responsibility for what is not listed for taxation, by withdrawing the protection of her laws to such as may not be found on the tax list, and until she does this, or something equivalent to it, there can be no just ground for enforcing penalties and forfeitures for non-payment of taxes on such as is listed for taxation. Such provision in the tax laws of the several States would perhaps unearth more personal property of the invisible and intangible sort that is carefully hid out of sight of the tax assessors than now appears on the tax lists throughout the United States, even though it should fail to wholly fill up the wide gap between the census and the reputed statements of aggregate wealth. Though such provision in the State tax laws would not probably secure the listing for taxation of all the intangible property which now escapes taxation in the several States, it would doubtless double existing valuations of this species of property in the several States, and in this way tend to lessen existing inequality in taxes; and if the

system of direct taxes on property valuations is to be perpetual, instead of the easier and absolutely equal system of excise taxes on production and consumption of such luxuries as spirits and manufactured tobacco being substituted for it, nothing less than the incorporation of such provisions in the tax laws of the several States can tend to put large and small property owners on a footing of equality in respect to State taxes, or excuse the exaction of penalties and forfeitures for non-payment of them.

The author is not prepared to urge the incorporation of such provisions in the several State tax laws, except as a secondary means of relief for the class of tax-payers in all the States represented by the 19,880 in the tabulated analysis of the Allen County tax-list above given. This class would probably be somewhat lessened in number, and that of the 532 be more than correspondingly increased under the operation of such provisions. A powerful, if not unanswerable argument in favor of such provision in State tax laws would be that such provision would justify penalties and forfeitures for non-payment of taxes, so far as justification can be found for them, by putting all property

owners on as nearly equal footing before the law as it is possible for the State to put them on, as respects the rate of tax on valuation. Nor would such provision in State tax laws be different in principle from that of registry laws respecting the right to vote at State elections. If it be competent for a State to provide that unless a citizen register his name and place of residence as a qualification for exercising the right of suffrage, it must be equally competent for the State to provide by law, that unless he list his personal property for taxation he shall not be entitled to that protection for it under the law, which is provided by taxing the property of others. The principle of no tax on property, no protection for property under the law, would be perhaps as well founded in public policy under popular institution, as that which restricts the right of suffrage to registered voters; at all events, it would justify penalties and forfeitures for non-payment of taxes, so far as justification can be found, by putting all property owners on the footing of equality before the law, as nearly as it is possible to put them, as respects the rate of taxation. Such provision in State tax laws would

probably do more to solve the problem of "the general welfare of the United States," by developing both the strong and the weak points of it, than any other that could be applied to its solution, besides also providing more revenue for State and county purposes of the general civil administration, and from sources and subjects better able to pay it than even the subjects of the Federal taxes, which it is proposed to use for these purposes. Nor does it seem extravagant to expect that the 97 in the 100 who now pay three fourths of the taxes while owning less than a third of the property of the country, will ultimately insist on the application of this principle, unless the system of excise taxes on production and consumption of spirits and manufactured tobacco shall be substituted for the existing system of partial, unequal, and direct taxes on property valuations.

In the column of totals in the tabulated statement, it will be seen that out of the aggregate $418,043 taxes of all sorts paid or delinquent for the year 1883, the rate of tax on aggregate valuation of $9,060,556 paid by the railroads and 532 others assessed $5,000 each

and over, is a fraction less than $1.20 on the $100, while the rate of tax paid by the 19,880 tax-payers of the county assessed less than $5,000 each on their aggregate valuation of $14,576,454 is a fraction more than $2.12 on the $100 of their aggregate valuation. These figures demonstrate the gross inequality of the system, and show that while the railroads and the 532 are taxed at a rate which, relatively with the 19,880, they scarcely feel, these last-named are taxed at a rate which they are unable to bear, as the $47,465 delinquency and penalty list, peculiar to this class of tax-payers, shows. And when we consider that while the property and effects of this class of poor or small property owners is such that it cannot escape the vigilance of the tax assessors, it is impossible to know how much more of that of the other two classes escapes this vigilance than is found and listed by it, the enormity of the discrimination in favor of the rich, and against the poor, grows more startling and apalling still! Surely this shocking oppression cannot be longer hid, and now that it has been brought into the glare of light, there must be a cry from the multitude of over-taxed poor, potent as a voice from

heaven, demanding that the system under which it has been practised, under the delusion of its being the most just and equal that the wisdom of man could devise, shall be denounced and abandoned, as the most unjust and unequal that malignant ingenuity could invent. It is with difficulty that strong nerves and habitual self-control shall maintain their equanimity and self-possession in the presence of facts so well calculated to arouse indignation. There is but the semblance of apology open to those who may seek to palliate or excuse the shocking picture which the figures in this case present. But as it will be found both too narrow and too trifling in its sum and substance, consideration of it may be deferred until it shall be brought into discussion by its friends.

It seems to have become habitual with some, who have no faith in partial reform of existing methods of injurious taxation, to decry such partial agitation. The agitation of what is called the "single tax on land," with entire exemption of personal property from taxes, of which Mr. George may be said to stand as the representative, comes in for a large share of this habitual denunciation. While the author no

more believes in such special remedies in politics than in nostrums and specifics in medicine, he is yet of opinion that the constant agitation of such partial schemes is, upon the whole, productive of good. It serves to attract attention and thought which would not otherwise be given to the subject. When there is such general complaint of overtax on property values, that men get to forming societies to counteract it by throwing the whole burden of taxes upon a particular class of property owners, it may be accepted as indicating the need of radical reform in the taxes. When whole communities are affected with like symptoms of physical ailment, we do not doubt there being something wrong in the material conditions of their existence. It is so in politics, and especially in the matter of taxes. Instead, therefore, of railing against resort to the use of these "specifics," the true method is to hunt for the prevalent cause of the general ailment, and to remove it. It will do no good to tell a community afflicted with prevalent malarial fever that every member of it has all the rights of civil and religious liberty, and that he ought therefore to feel happy, when he knows he is not. There is no

use in decrying the use of "quack medicines" when nothing else is proffered in place of them.

It is for similar reasons that the author, instead of finding fault with any of these schemes of partial remedy, feels disposed to encourage rather than to check them. But only so far as it may tend to ultimate adjustment of all taxation upon the just principle that *the aggregate wealth of the country* (whether it be in lands. public securities, or other form of personal property), rather than *the aggregate average of its poverty*, shall bear the brunt of the taxes, No adjustment of taxes which does not recognize this for its basis, can be other than partial, and therefore do no lasting good. *Ability to pay the tax assessed*, rather than moral or other obligation to pay it, is the true ground for taxation; for obligation to pay is proportioned to the protection afforded. Hitherto we have begun to tax from the bottom, with a uniform rate upwards. Instead of this we should begin on top, and tax downwards, lessening the rate of tax as we go down. The result will probably be that, when the line of $5,000 assessments, which now pays three fourths of the

taxes on values, is reached, there will be no need of going any lower, except for the peculiar purposes of cities and incorporated towns; and as the tax-payers have direct control of these, none but themselves can be to blame if the tax be not just what the majority of them want.

## CHAPTER XI.

**Poll Taxes—Trifling Amount of These Paid by the Class of Large Property Owners—As Peculiar to the Class of Small Property Owners as Penalties and Delinquencies.**

The total of $22,860 for poll taxes in the tabulated statement of the Allen County tax-list, is another feature in the system of direct taxes in no way less shocking to the moral sense than the pretence of equality of tax on valuations which has been unmasked in the case of Jackson township in the preceding chapter. Though these poll taxes are not laid under any pretence of equality in point of ability to pay them, and are confessedly arbitrary in principle, yet when we come to compare the percentage in number of polls with that of amount of taxes paid by large and by small property owners respectively, we find that the disparity between these two classes of tax-payers, though somewhat less than in the taxes paid by them on valuations, is yet liable to the charge of putting the heavier burden on shoulders least able

to bear it, while another class of tax-payers is wholly exempt from poll taxes. Of the total of $22,860 poll taxes, only $192 is laid on 79 taxed $5,000 and over; thus showing that in the matter of polls, as well as in that of tax on valuation of property, it is those least able to pay who bear the heaviest burden of taxes. The share of the 79 is but a fraction of one per cent. of the whole tax, while that of the 9,307 others charged with this tax is more than 99 per cent. of the whole. If it be said in mitigation of this inequality, that but little of the amount laid upon polls is ever paid, the answer is that the plea of non-payment is but proof of inability to pay, and establishes the charge that in the greater number of poll taxes the tax is greater than the subjects of it are able to pay. This poll tax is confessedly arbitrary at best, and as it is productive only in what it extorts from the poor, while it gets practically nothing from the rich, is obnoxious to the charge of being so purposely framed as that while no poor person can escape its meshes, the rich pass through them in shoals. And when we take into the account that more than 99 per cent. of the amount collected from it is, as a rule, paid by

those burdened with the charge of rearing families in which every dollar may be said to be of the essence of life, its hardship seems the more monstrous still. Surely something which is not essential to the comfort of the poor might be made the subject of a specific tax neither depending on valuation nor yet liable to be affected by Section 2 of Article IV. of the Federal Constitution, may be found to take the place of this odious poll tax, now almost solely paid by the poor, when paid at all. Or better still, if the system of defraying the expense of the civil administration by taxes on polls and property valuations is to be perpetual, why not extend to the poor tax-payer the same exemption which is extended to poor debtors by the statute of exemption from sheriffs' sales under execution on judgments founded on contracts? What moral right has the State to compel a judgment creditor to be more forbearing towards a debtor worth less than $600, than herself towards her poor tax debtors? The execution creditor of a debtor worth less than $600 may be as poor or poorer than his debtor, but this circumstance is of no significance as between individuals.

It is true that the exemption from taxes of all polls and property valuations of $600 and less, might sensibly lessen the aggregate yearly State revenues without corresponding increase in the rate of tax on valuations over that amount; but in lieu of this, the deficiency might be made up from tax on such incomes as could be reached by State tax on them, or by some specific tax that could be enforced without the general hardship now felt by a very large class in paying poll taxes and other taxes on valuations which do not reach $600 each. Though a graduated State tax on incomes could not, for the reasons stated in a previous chapter, be expected to operate with entire success, it may at least be as equal and effective, and certainly far less oppressive than the existing poll tax and taxes on property valuations under $600, and whatever of inequality may be found in its operation would at least be limited to a class of tax-payers better able to bear it. Whatever inequality might be found in such State tax on incomes, would be no more so than is inherent in existing taxation of property valuations, Specific taxes on known lucrative employments and occupations, which now pay no tax for

State and local purposes, might be eligible substitutes for poll and other taxes which bear so heavily on the poor and small property owners.

But better than any modification or amendment of an inherently bad system of taxes, would be the substitution of some other in place of it, in which the vain attempt to equalize taxes on partial and imperfect valuations, and arbitrary taxes on polls, shall be replaced by excise taxes on production and consumption of luxuries, such as spirits and manufactured tobacco in the first place, and graduated taxes on incomes made next in order to supply deficiencies. It is the just reproach of the existing system of State taxes on polls and property valuations for support of the general civil administration, that the poll tax is as distinctively peculiar to the class of small property owners who are assessed less than $5,000 each, as is the delinquent tax and penalty on these valuations; so that the result seems to be practically the same, whether the great multitude of 97 out of every 100 tax-payers be taxed as to polls on confessedly arbitrary principles, or under the pretence of equality in respect to valuation. Such uniform

results under the existing system of State taxes for essential purposes of "the general welfare of the United States," in throwing the heaviest burdens on shoulders least able to bear them, cannot be because there is no practical difference between right and wrong in public policy —between equality and inequality,—but because instead of there being either right or equality, there is but the pretence of these qualities, in that part of the system professedly based on them. Taxes on valuations can, in the nature of things, only be equal among tax-payers when *all* the taxable property of all classes and conditions in the State is listed, valued by uniform and inflexible standards of valuation, and taxed at like uniform and inflexible rates. The absence of any part of it from the tax list, necessarily makes the rate of tax on that which is listed relatively higher than if all were listed; and even if all should be listed, the impossibility of uniform judgment as to value among the multitude of assessors necessary to perform the task of valuation, would still make equality of assessment impossible. And since long experience under the system of direct State taxes on polls and property valuations has shown that

all the property in the State neither has been, nor can be thus listed for taxation, the alternative seems to be the abandonment of the system and substitution of some other in place of it on the one hand, or else the abandonment of the pretence of equal taxes on the other.

## CHAPTER XII.

**Conclusion upon the Case Stated in Chapter I.—Classification of Subjects and Objects of Taxation.**

The conclusions to be drawn from the preceding chapters seem to be these, viz.: that as there can be no complete definition of "the general welfare of the United States," as stated in Paragraph 1 of Section 8 of Article I., unless the definition include in its terms the general civil administration under separate and exclusive State authority, the primary power of taxation, to provide for necessary expenses of this civil administration, must be deemed to be vested by the Constitution in the Federal autonomy, and to be as exclusive of the like power in the several States, as that "to pay the debts," or "to provide for the common defence" of the United States; and that as to the subjects of the civil administration under separate and exclusive State authority, which are not general and common to all the States alike, but are local or peculiar, the several States have a concur-

rent power of taxation with the Federal autonomy, except as to duties on imports, to be exercised at separate State discretion, to provide for them.

The following observations seem to be warranted by the above conclusions, but are submitted more as *quære* than *ex cathedra*, viz.:

First. That the Federal autonomy is limited to exercise of its powers of taxation as the only means to provide for the general welfare of the United States.

Second. That so far as subjects of taxation are concerned, the power of taxation is either primary and exclusive in the Federal autonomy, or concurrent in the Federal autonomy and the several States. Over no subject is the power of taxation in the several States exclusive of that of the Federal autonomy; while as to the ends or purposes of taxation, concurrent Federal and separate State powers of taxation do not exist.

Third. That so far as ends or purposes to be accomplished by taxation are concerned, the powers of taxation may be classified as either general, local, or peculiar. This classification may be illustrated by the following examples, viz.:

That which is common to all the States as to the purpose of the tax, though not necessarily so as to the subjects of it, may be classed as general. The legislative, judicial, and executive expenses in respect of the rights of person and property and the maintenance of social order in the several States, may be named as dependent on this class of taxation, and as exclusive in the Federal autonomy as to the ends and purposes of the tax.

That which is not common to all the States but pertains to some of them only, may be classed as local. The building of harbors and the improvement of navigable rivers and other waters, while concurrent in the Federal autonomy and the several States as to subjects of the tax, is exclusive in the several States as to the purpose of it; while that which is not common to all the people of any single State, but pertains to some of them only, may be classed as peculiar; and though, like the preceding, concurrent as to subjects of taxation, is exclusive in each of the several States as to the ends and purposes of the tax. Taxes for expenses of cities and incorporated towns may serve as examples of these peculiars.

DAY

Octavo, cloth, . . 25

vo, cloth, 1 00

U. S. Navy. . . 50

H. JAQUES, . . 50

By RODMOND . . 25

AQUES, Lieut. . . 50

cloth, 1 00

vo, cloth, 75

Growth. By . . 75

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